United States Court of Appeals for the Second Circuit

APPENDIX

77-7037

B

In The

United States Court of Appeals

For The Second Circuit

NATIONAL AUTO BROKERS CORP., et al.,
Plaintiffs-Appellants,

-against-

GENERAL MOTORS CORPORATION, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of New York.

UNITED STATES COURT OF APPEALS
FILED
AUG - 8 1977
DANIEL FUSARO, CLERK
SECOND CIRCUIT

JOINT APPENDIX - VOLUME

CARL E. PERSON
Attorney for Plaintiffs-Appellants
132 Nassau Street
New York, New York 10038

PAUL, WEISS, RIFKIND,
WHARTON & GARRISON
Attorneys for Defendants-Appellees James M. Roche, Frederic G. Donner, General Motors Corp. and General Motors Acceptance Corp.
345 Park Avenue
New York, New York 10022

HETZELT, WATSON, McGARVEY & HETZELT
Attorneys for Defendants-Appellees Hamister-Gillogly Chevrolet, Inc. and Niagara Frontier Automobile Dealers Association, Inc.
1904 Liberty Bank Building
Buffalo, New York 14202

JOSEPH C. TISDALL
Attorney for Defendant-Appellee Bob Bain Chevrolet
300 Statler Office Building
Buffalo, New York 14202

BRENNAN, CALLAHAN, TESSEYMAN,
ZELMAN, RUNFOLA & NOBLE
Attorneys for Defendant-Appellee Paul Batt Buick, Inc.
1360 Statler Hilton Hotel
Buffalo, New York 14202

SIDNEY A. WEISBERG
Attorney for Defendant-Appellee Paragon Oldsmobile, Inc.
225 Broadway
New York, New York 10007

BORINS & SNITZER
Attorneys for Defendant-Appellee Glen Campbell Chev., Inc.
1718 Statler Hilton Hotel
Buffalo, New York 14202

PAGINATION AS IN ORIGINAL COPY

by you in a hearsay fashion. We have had that repeatedly. Dealers can come to court or they can be brought to court or their depositions can be taken.

Q What was the next conversation?

A The next conversation was that there was some problems in finding the order of the car.

Q State, if we can be very careful, what you said to him and what he said to you. No background.

A It is extremely difficult under these restrictions, Mr. Person and I'm trying my best.

Q Try to stick within that framework, please.

A I asked. What he had done about locating the car. Actually he was not doing anything about locating the car and why -- the conversation got into a discussion as to why he had told --

Q State what it is rather than trying to characterize it. State what he said and what you said.

THE COURT: Just a moment. You spoke so quickly I don't think we got it.

You started out, according to your testimony, by saying, "What have you done about locating the car?" Is that what you said in substance to him?

THE WITNESS: To be precise, no.

THE COURT: Be precise and what did you say?

THE WITNESS: I am being precise. This was a discussion based on previous events that had taken place pertaining to this order and all of the people involved in it, and I asked him --

Q Did you describe any of these events to him ?

MR. KAPLAN: I object to that.

Q Could you state only what you said to him.

THE COURT: Wait a minute.

A I asked him what he was going to do about getting us this car. It was a car that we had ordered. Our customer was attempting to cancel. He had gone to a Washington dealer who told him he could get him the car in three weeks, words to that effect. I asked him why he told Mr. Askew -- not Mr. Askew but Mr. Wright of

Action Line -- why, if Mr. Askew had gone to a regular Chevrolet dealer, he would have had that car a long time ago, and he said, "Well, that's true. You are not an authorized dealer, and General Motors, you know, is not supposed to be selling you automobiles. Had he gone to a regular dealer he would have gotten his car."

I said, "Now, we have a problem at this point, and this problem has been created by you people. We were assured we were getting the car. Now, you told me you were trying to locate it. Now, we want that automobile. Now, if a dealer in Washington could get it in three weeks I'm sure you can get it in three weeks."

He said, "Well, I don't know whether or not we want to pursue it," or words to this effect. This is the substance of the thing.

He referred me to Jack Calan. He said, "If a dealer ordered a car and it's being built somewhere we are going to try to trace it down and maybe we'll give you that car, but we are not in the business of selling cars to people who resell them." He said, "The car may have been built in St. Louis."

Is that the end?

Q Is that that the end of your communications with him?

A Yes.

Q Can you tell of anything else?

A Well, there was a reference to Jack Calan, whom I spoke to.

THE COURT: This would be subsequent to that, right?

THE WITNESS: It might have been subsequent to it. It might have been before it, your Honor.

THE COURT: Where did you get the name Jack Calan?

THE WITNESS: From Mr. Lowe.

MR. KLEINBARD: Before we go on, is it established that we had reached the end of the second conversation with Mr. Lowe? I think Mr. Person asked him and I'm not certain.

THE WITNESS: No, I have something to add.

THE COURT: He has more to describe. Go ahead, Mr. Maiorana.

A When he said "General Motors is not supposed to be selling cars to you," he added, if I can recall correctly, he said, "Or to supply its dealers to sell cars to people who will resell them to customers."

Q Whom did you speak with from General Motors after that?

MR. KLEINBARD: Is this the end of the conversation?

THE COURT: Please.

Q Whom did you speak to after that from General Motors?

A I spoke to Jack Calan.

Q You are not sure whether it was before or after this conversation?

A It may have been before. There was a whole series of events which I cannot relate and I can't put them in the proper sequence without doing that, so I'm going -- the people I talked to and what was said between themselves and myself --

Q Who is Mr. Calan?

A Jack Calan was from the Chevrolet zone in Philadelphia. He was a distributor with the distribution department, and he said that they could not locate the order. Sometimes an order would be put in by a dealer as a stock order without a name on it, and he said, "We would be trying to trace it in that manner."

He said someone else -- he referred me to someone else, or "Someone else may know something about it." I believe his name started with a "Q." Maybe you might have --

MR. PERSON: May I suggest a name to him?

THE COURT: Sure.

Q Mr. Condrack?

A Mr. Condrack.

(Pause.)

THE COURT: Where do we go from there?

Q Is this the end of your conversation?

A In substance that's the end of the conversation. They were trying to locate the car.

Q Did you communicate with anyone from the Chevrolet Division distribution center in Arlington, Virginia?

A I may have. I would have to look at some documents to refresh my memory.

Q What was the next thing you recall with respect to any conversation with a GM employee?

A There was mention made by Mr. Lowe, I believe, that the car might be in the process of manufacture in the St. Louis plant, that he would be checking that, and in the final analysis the thing that I can remember about that is that Mr. Lowe said we were not going to get the car and had to refund the deposit to Mr. Askew for the car, and he purchased the automobile himself so we lost a customer and consequently our broker.

MR. KLEINBARD: I move to strike that, your Honor, not being part of the conversation with Mr. Lowe.

THE COURT: Motion denied.

Q Were there any other complaints concerning this automobile that was ordered; did Mr. Askew have any other complaints against him?

A Yes. He contacted the Consumer Frauds Department because once Mr. Wright got into the picture --

MR. KLEINBARD: I again object.

THE COURT: Sustained.

Q Just try to sick with a yes or no.

A Yes.

MR. KLEINBARD: I object to the line, not merely to the yes or no.

THE COURT: Absolutely. This is something that Mr. Askew did.

MR. PERSON: The complaints, if they had been received by Nabcor --

Q Were any complaints received by Nabcor?

A Yes.

Q And the complaint you had just described?

A Yes.

Q Do you know of a Reverand Eugene Kelly?

A Yes.

Q Where did he live?

A He lived near Watertown, New York.

Q And do you recall any transaction -- strike that.

Did Nabcor have a broker in Watertown, New York?

A Yes. We had a broker, a Mr. Young, A. J. Young, I believe his first initials were.

Q He's one of the plaintiffs in this action?

A Yes. He was a Nabcor broker in Watertown, New York.

Q Do you recall any transaction involving Mr. Kelly, Reverand Kelly, concerning an automobile?

A Yes. In 1969 I was made aware by our broker, Mr. Young, of a Pontiac he had purchased --

MR. KLEINBARD: Your Honor, may we approach the side bar for a moment?

THE COURT: Okay.

(At the side bar.)

MR. KLEINBARD: Your Honor, this is a transaction that Mr. Miaorana has no personal knowledge of. It involves, I think, the refund that eccliastical people get, refund of the federal excise tax. He ultimately got the refund of the tax. It can't possibly relate to the boycott issue. And the whole thing is going absolutely nowhere. It is totally irrelevant.

MR. PERSON: He communicated with a GM employee concerning this delay in getting a refund.

THE COURT:? Who did he communicate with?

MR. PERSON: Either Mr. Harwood or Mr. Redmond in the Buffalo zone.

THE COURT: What did they tell him?

MR. PERSON: This concerned Mr. Kelly wasn't the -- he was a second owner of the vehicle.

MR. KLEINBARD: It has got nothing to do with the refund of the excusa tax.

MR. KAPLAN: The problem was this,

the problem was that if that priest was the purchaser of the vehicle he was entitled to the tax refund. He started complaining that he didn't get the tax refund. The problem is the car was delivered not to the priest but to Nabcor.

MR. KLEINBARD: No, it was delivered to the church. It was delivered to the church. It was put in the church's name and that's what held up the delivery -- that is what held up the refund.

MR. KAPLAN: But it went through a series of intermediaries and GM didn't know it was a priest until late in the game, and when they found out they gave him the refund.

MR. PERSON: They knew he was a priest for over a year and there were two priests involved.

MR. KAPLAN: Two cars, a year apart.

MR. PERSON: Two priests simultaneously.

MR. KAPLAN: It all proves nothing.

THE COURT: Just put it on. Put it on, but, you know, I really think, Mr. Person, you have got to, before you put these witnesses on you have got to plan very carefully, and each night you should go over with the witnesses for the next day and plan exactly with them, so that you can put on admissible evidence. It is up to you to do it, and it is not up to us to have to pick and choose, pick our way around in court during the day.

If you want to put on the conversations, if you want to put on Mr. Maiorana's knowledge of admissible evidence about this transaction, you can do it. The problem we have is in each instance we have to thread our way right here on the spot and try to figure out on the spot what is admissible, and he has not been versed in this, and it's a very great problem. I don't have any objection if you want to put on the thing about the priest, and the eccliastical refund or whatever, put it on.

MR. KLEINBARD: Your Honor, may I understand the purpose of the offer? There is no dispute that they got the refund.

THE COURT: The purpose of the offer is to show it was held up.

MR. KLEINBARD: That there was a delay in getting their refund, that is the whole purpose of it?

MR. PERSON: And --

THE COURT: And I suppose there the same kind of statements.

MR. PERSON: With zone officials.

MR. KAPLAN: Can we stick with what he knows. We started out with he was made aware --

THE COURT: That's your duty, Mr. Person, to stick to it.

(In open court.)

BY MR. PERSON:

Q Did you have any communication with any GM officials concerning Reverand Kelly?

A Yes.

Q And whom did you talk with?

A I believe there were two, Redmond or Redwood or Harwood.

Q Can you recall --

THE COURT: Wait a minute.

A One was Harwood and one I think was Redwood.

THE COURT: Harwood and Redwood?

Q Redmond.

A Redmond and Harwood. Redmond I believe rings a bell. I'd have to refresh my memory and look.

Q How many conversations did you have with them?

A There was a series of conversations which concerned federal excise taxes.

Q Where were Mr. Redmond and Mr. Harwood located?

A Detroit, I believe. I don't recall specifically at this point. Might have been the Pontiac zone in the area --

Q You don't recall?

A I really don't recall.

Q Can you state what it is that you said to them and identify who it was and what he said to you? Just limit yourself to what was said, please, forgetting about any background, just what you said to them and what they said to you.

A There was a problem,an excise tax problem, for Reverand Kelly, and I believe I spoke to Mr. Redmond first, and I asked him why the Reverand Kelly had not received -- it had been several months and there was a lot of communication, there were several letters that had passed between the Reverand Kelly and General Motors officials about this excise tax that did not apply to members of the clergy, and I asked him why he couldn't get his excise tax refund, which was a matter of course in these type of transaction sales on these type people, and his response to me is that Reverend Kelly bought the car from us, we were not an ahthorized dealer, and we were considered -- we didn't have a fleet certificate; the car, when in our name, we were considered the original retail purchaser and he was the second buyer, and as such was not entitled to the excise tax refund.

So I debated this point with him. I believe I told him that their warranty states, bringing that up as an example, that the warranty goes to the original retail purchaser of the automobile. We, Nabcor, were not a retail purchaser; we were a reseller of cars. So that any benefits that would accrue to a buyer should accrue to the Reverand Kelly because he was the first retail purchaser, and he should get his excise tax and any warranty or whatever that was coming to him.

He said no, they considered him the second owner, and as far as warranty was concerned he was the second owner, and we were considered the first owner, and that was that.

I believe I had subsequent conversations on the subject. I believe I discussed the fact that the excise tax program as such, being in the hands of General Motors, that I had checked with the government, that in every other instance the excise tax was collected by the retailer, and those people who were not subject to the excise tax did not have to pay it, and it was the retailer who made that decision.

In this particulat case the law seemed to have been written, and according to government officials --

MR. KLEINBARD: Are we getting conversation?

THE COURT: He says this was all his conversation with Mr. Redmond.

Is that right?

THE WITNESS: That is right.

THE COURT: Go ahead.

A And that they seemed to have written the law in, and I was given the impression by the government official that the manufacturers had a hand in getting this legislation in, that they controlled the excise tax, and it was they who decided who got it and who did not get the federal excise tax, and the federal excise tax was refundable to people like ambassadors or people on the staff of reign embassies, American servicemen overseas, people, the ministry, leasing companies, domestic leasing companies with overseas offices, like Hertz and Avis, and they made that decision, and the application had to be made to General Motors. General Motors made the decision as to whether they refunded it.

Q Do you know if there was a refund ultimately to the reverand?

A I believe after several months of discussions and statements on my part that I was going to take whatever action I could to protect our customer and to see that he got what was coming to him, he was a member of the ministry, he was entitled to a refund on the income tax,--

excise tax, rather, he was not subject to the excise tax, and I believe he did get the excise tax refund eventually, after a lot of --

6B

Q Did you have any conversations --

MR. PERSON: If I may ask this in order to cut short some of the conversation that he had, your Honor.

Q Did you have any conversations concerning warranty?

A Yes.

Q With whom?

A With the same individual.

Q Concerning whom?

A The Reverend Kelly.

Q First of all, state when that occurred.

A Well, I believe I mentioned that.

Q The same conversation?

A In this same conversation, when I pointed out their warranty that went to the original retail purchaser.

THE COURT: He has already testified about that. He doesn't need to repeat that.

Q Was the conversation concerning any particular repair for the Reverend?

A Yes, there was something, if I recall vaguely, a waterpump or somedarn thing that had gone bad, that they wouldn't repair for him because he was considered a second owner.

MR. PERSON: I would like to offer an exhibit now, 67.

MR. KLEINBARD: I have no objection.

THE COURT: Received.

xx (Plaintiffs' Exhibit 67 received in evidence.)

(Mr. Person read from Exhibit 67 to the jury.)

MR. KLEINBARD: May we have the entire letter read, your Honor?

THE COURT: Yes.

MR. KAPLAN: The problem, your Honor, is that what he read is not part of the letter at all.

MR. PERSON: It is a note.

MR. KLEINBARD: It is an internal --

THE COURT: The jury doesn't have this. What are they supposed to make out of this? Tell them what you have got, if it is a letter, or if it is a note.

MR. PERSON: What I read is a note from one person in the Buffalo zone, Mr. Jordan, to Mr. C.D. Clark, also in the Buffalo zone, concerning this automobile of Reverend Kelly.

THE COURT: Does it have a note at the top?

MR. PERSON: Yes, it does.

THE COURT: And the note at the top is written by whom?

MR. PERSON: By Mr. Jordan, it would appear, from the signature at the bottom of the letter.

THE COURT: All right. Now, what are you going to read from? Does anybody want the letter read?

MR. KLEINBARD: I would like the letter to Reverend Kelly read, yes, your Honor.

THE COURT: Let's have the letter and the note. Read the whole thing.

MR. PERSON: Do you want to?

MR. KLEINBARD: I will be glad to read it.

(Mr. Kleinbard read from Plaintiffs' Exhibit 67 to the jury.)

MR. KLEINBARD: Then at the top there is the interoffice note which, of course, did not go to Mr. Kelly.

(Mr. Kleinbard continued reading from Plaintiffs' Exhibit 67 to the jury.)

THE COURT: All right.

BY MR. PERSON:

Q The letter states a 1969 Pontiac stationwagon. The letter is dated in August, August 18, 1970. What model cars were orders then being taken for at the time of this letter?

A In August?

Q Yes.

A 1971 cars.

Q Did you state what conversation you had concerning the Reverend's warranty problem?

A Yes, that he was considered a second owner and we were considered a first owner and as such he was not entitled --

THE COURT: Who told you this?

THE WITNESS: Mr. Redmond.

THE COURT: Okay.

Q That is the end of your conversation concerning that,is that correct?

A I think I described a discussion as to the original retail purchaser and the --

Q Don't go over what you have said. I just want to --

A We were a reseller of automobiles and the restriction placed on me is that -- I cannot use words that are common language and have a definite meaning in the automobile industry; however, in this type of an instance we were considered an original purchaser, retail purchaser, rather than the Reverend, even though we had a new car dealer's license, and we had purchased a car for resale.

Q Is that the end of your conversation?

A I think so. At the moment I can't recall anything else, Mr. Person.

Q Do you recall a Degnan Chevrolet?

A Yes.

Q Where was that?

A That was located in Philadelphia.

Q Did Nabcor ever do any business with Degnan?

A Yes.

Q What business did you do?

A In 1966 we bought one or two cars -- I think it was one, really, or ordered one from Degnan.

MR. PERSON: I have Exhibits 489 and 490.

MR. KLEINBARD: No objection.

THE COURT: All right,received.

xx (Plaintiffs' Exhibits 489 and 490 received in evidence.)

THE COURT: It is just a little bit before one and will the jury retire now until 2.15, and I will talk to the lawyers.

(Jury left the courtroom.)

THE COURT: Now, I would like to know where we are going on this question of warranty work.

MR. PERSON: I have some warranty documents with me, your Honor.

THE COURT: That isn't my question. I don't know that the ground rules are on the question of warranty work. I don't even know what the issues are here.

MR. PERSON: The issues are an interference with Nabcor's business by not enforcing any requirement that the dealers perform warranty work for people that were Nabcor's customers.

THE COURT: Let's start back. I take it that General Motors had some policy about warranty work?

MR. KLEINBARD: That's right, your Honor.

THE COURT: And what was that policy?

MR. KLEINBARD: The policy changed from time to time, but basically, the warranty was in the name of the first purchaser, and it could then be transferred to the second purchaser within a certain number of miles and at some time, on some occasions upon the payment of a modest amount of money.

THE COURT: Modest amount of money to whom?

MR. KLEINBARD: To General Motors. In other words, this varied from year to year. I can't give you the policy for each year, but generally speaking, the warranty ran to the first owner for a period of miles, and the unused portion could be transferred if it was properly applied for by the second owner within the mileage limitations and during some periods of time upon the payment of a fee.

THE COURT: But you are saying that if we got into all the details there would be certain rules and regulations at various times about this warranty and you are saying that in general a second buyer might be able, depending on the particular rules and regulations and the procedures --

MR. KLEINBARD: I should have added time, too.

THE COURT: -- to get transferred to him the warranty.

MR. KLEINBARD: That's correct, your Honor.

THE COURT: Now, is it your contention, Mr. Person, that these procedures are in and of themselves illegal or someof them were illegal?

MR. PERSON: That, your Honor, plus the fact that Nabcor was not delivering a warranty to the first retail customer of the car as a result of GM's policy. Nabcor --

THE COURT: I don't understand what you are saying.

MR. PERSON: Nabcor was a new car dealer but its own customers stood as second purchasers, Nabcor being considered the first retail purchaser by GM.

The result is that Nabcor is now reselling a used car in GM's terminology, because the warranty has to be transferred --

THE COURT: Let's slow down. I don't know these policies in detail, but I am sure you do, or at least I hope you do.

2 My first question to you was do you contend that there was anything illegal, in whole or in part, about these policies, just per se, was there anything illegal?

MR. PERSON: Yes.

THE COURT: And what was illegal about them?

MR. PERSON: That General Motors had a policy of not permitting a non-franchise new car dealer from giving the same warranty to the customers of Nabcor, for example, as the GM dealer gives to its own retail customers. There was a difference and that difference created a major problem.

THE COURT: Well, I would think this, that as far as what the policies were at the various times, they would be stipulated facts, whatever they were. I wouldn't think there would be the slightest contest about them nor would there be any need for the jury to determine as a matter of fact what the policy was at a particular time. The policies, I am sure --

MR. PERSON: That should be true, your Honor.

THE COURT: All right. Now, the question of whether they were illegal, I take it you are contending that they were illegal per se, and that if I tried to set up the International Auto Brokerage Company and I tried to set it up out in Oklahoma, that as applied to me or any other person like myself, that always, inevitably, these things would be illegal, if they were applied to prevent my purchaser from getting the benefit of the warranty. That is what your first contention is.

MR. PERSON: Correct, your Honor.

THE COURT: So that is really a matter of law, it seems to me. I don't see that there is any jury question there.

MR. PERSON: Not in that respect, but also in the application --

7a

THE COURT: Now, in the application, do you contend here that there is any instance where the policy was not applied according to their terms?

MR. PERSON: I would have to see the warranties before I could answer that.

THE COURT: Look, Mr. Person, you are the guy making the claims here. It is a very important and basic question. Do you contend that the policies here were applied other than on their terms? I mean specifically, do you claim they were distorted in some way to the detriment of Nabor or something like that?

MR. PERSON: We have instances where General Motors employees refused to require that a dealer performing the servicing -- in other words, your Honor, General Motors did not require its dealers -- GM did not service the car. The GM warranty was done by its dealers. So there is no place we could go to but a GM dealer.

THE COURT: You are not answering my question. I want to ask it very specifically.

MR. PERSON: I don't have the warranties. They were not given to me. I have requested them. I will have to read the warranty for each transaction to see whether or not the GM employee fell within the terms of that warranty. I cannot answer that right now.

THE COURT: I have a very strong feeling that your complaint is basically about the warranty program and your contention is that it was illegal as applied here, as it would be applied to any similar person; isn't that right?

MR. PERSON: That's correct.

THE COURT: I have a very strong feeling that you don't have any evidence that there was any special manipulation of that program or distortion or misapplication of the program specifically directed at Nabcor. I have a very strong feeling that your problem here is that theprogram was applied and Nabcor suffered from it. Isn't that your claim?

MR. PERSON: That's half of it. That's an important part of it.

THE COURT: What is the other half?

MR. PERSON: The other half is to get the warranties that I have requested and compare them with incidents that occurred to see if the incidents that occurred were within the warranty.

THE COURT: Should he be so informed of the warranty program?

MR. KAPLAN: Mr. Person has been produced a couple of thousand warranties in the warranty program. Among other things he has had the warranties for every make and model of General Motors car for the period 1967 to 1970. Defendants' Exhibit III for identification, which was produced to him pursuant to the stipulation about prehearing procedures, contains all of the warranties of all of the General Motors cars for all of the periods in question.

If I could come back to the complaint, which is where we ought to start on the question of what is or what is not in the case, there are two and only two claims made in the complaint that are still standing with respect to warranties.

THE COURT: What counts?

MR. KAPLAN: In Count 128 of the complaint it is alleged that as part of the conspiracy to boycott Nabcor General Motors participated by cooperating with the defendant and co-conspiratorial dealers who refused to give the full benefit of the factory warranty to Nabcor customers.

That's the only allegation in that general conspiracy.

Then the portion of Count 5 which may still gp4

be alive is the claim that General Motors conspired with the other three automobile manufacturers to have a warranty program which permitted Nabcor customers to be harassed and otherwise deprived them of the warranty which customers were fully entitled to by contract and law, and that the programs were designed pursuant to this conspiracy among the four automobile companies for the purpose of injuring Nabcor.

I think in the light of the admissions that were made on the motion to sever and the numerous admissions these witnesses have made in their depositions, there is no horizontal case here against General Motors.

MR. PERSON: The warranty program, when Nabcor went into business, allowed Nabcor customers to receive warranty work. Subsequent to that there were a series of changes which interfered with Nabcor's business. I think that Mr. Kaplan or Mr. Kleinbard had suggested --

THE COURT: What I'm trying to get at is this. I didn't understand Mr. Person to be describing to me any horizontal conspiracy about warranty work in his statement a few minutes ag-. I don't think the allegations in the complaint are particularly helpful at this point. The question is what is Mr. Person claiming now? I didn't understand him to be really telling me that he was going to prove some horizontal conspiracy. What I understood him to tell me was that he has one complaint which he is definitely making and that is that the warranty program of General Motors as it existed was illegal and it would be illegal in the case involving Nabcor or any other person who could not get the warranty work because they were deemed to be the second purchaser and so forth.

MR. KAPLAN: I would like to respond.

THE COURT: Just a minute.

Second, he may have a claim but he is not sure that there was some activity by General Motors within the rubric of the warranty problem specifically designed to harm Nabcor. That would mean something other than just a normal application of warranty program. On its terms it would mean a misuse, a distortion, an inaccurate use of warranty program specifically to hurt Nabcor.

Have I summarized your claims correctly?

MR. PERSON: Yes.

THE COURT: You want the opportunity to review the second possible claim. I don't know whether you have the documents or you don't.

MR. PERSON: I probably do. I have millions.

THE COURT: What I am leading up to is this. As far as the first claim and the second claim, the second claim is the one you are not sure about. As far as the first claim, I see no issue for the jury at all.

MR. PERSON: Unless the issue is

pga3

not per se. I think it is per se case and I don't know if there is a jury issue.

THE COURT: I am speaking somewhat off the top of my head but I have been through that warranty thing before. We have touched on it a number of times in our discussions. I think its either per se or it is nothing, and I don't think, Mr. Person, there is a jury question here. I think it is strictly a matter of law. I think it's a separate legal question. I don't think there is anything for the jury.

Now, if you have got a second type of claim here, then of course that would be a jury question and would be bound up with your other claims.

I am going to ask that we not go further into the warranty problem now and we only go into it if and when you want to make the second type of claim, and then you apprise us and we will talk about it.

We have taken a little time.

Please try to get back at 2:15 I will also.

(Luncheon recess.)

THE COURT: I don't think it was received. You are offering the entire answers?

MR. PERSON: Yes.

THE COURT: I take it that General Motors -- this is the answers of the Association defendant, answers to interrogatories.

MR. KLEINBARD: We would just say they are not binding on us, your Honor.

THE COURT: You are correct. I have already instructed the jury on that. It relates only to the Association. What's the number?

MR. PERSON: 619, your Honor.

THE COURT: All right. Received, subject to the limiting instructions.

(Plaintiffs' Exhibit 619 was received in evidence.)

xx THE COURT: Do you have any more questions of Mr. Maiorana?

MR. PERSON: Yes.

DIRECT_EXAMINATION CONTINUED

BY MR. PERSON:

Q Going back to the matter with Mr. Stolarski and his Corvette, you had a telephone conversation with a Mr. Econ who then referred you to Mr. Marcin?

A Marcin.

Q And did you communicate with Mr. Marcin?

A Yes.

Q Was Mr. Marcin an employee of General Motors?

A Yes.

Q What did you discuss with Mr. Marcin, being careful to keep within the parameters of what we have talked about before.

A Okay. I told Mr. Marcin that Mr. Econ had referred me to him, to handle a problem with this Stolarski car for a drop shipment to Shore Chevrolet, and he said that --

THE COURT: I think we have got to get the context of this. I'm not criticizing you in any way, Mr. Person, because we interrupted you on evidence matters, but let me -- as I understnd it -- let me start over. Was it your understanding that Mr. Stolarski had ordered this car from a New Jersey dealer? No, no, wait a minute, he had ordered it from whom?

THE WITNESS: Badie Bodiya.

THE COURT: Who was located where?

THE WITNESS: Who was our Nabcor broker in Detroit.

THE COURT: So Stolarski ordered it from the Nabcor broker in Detroit?

THE WITNESS: Right.

THE COURT: And then you, Nabcor, had to actually get the car from a dealer, right?

THE WITNESS: Right.

THE COURT: Okay. And you ordered, you, Nabcor, ordered this car from Cerota Chevrolet in New Jersey?

THE WITNESS: Cerota Oldsmobile in New Jersey.

THE COURT: But since Stolarski was out in Detroit you wished to have the car actually delivered in Detroit, is that right?

THE WITNESS: That is right. That was the request.

THE COURT: And you wished to have it delivered to a particular dealer in Detroit?

THE WITNESS: Yes. This was Mr. Stolarski's request.

THE COURT: I've got that. Just

follow me closely. I just want to know, was there a dealer in Detroit that you wanted it delivered to?

THE WITNESS: Yes.

THE COURT: What was the name of that dealer?

THE WITNESS: Shore Chevrolet.

THE COURT: S-h-o-r-e or S-u-r-e?

THE WITNESS: S-h-o-r-e.

THE COURT: And I take it your understanding was, through various conversations which we won't go into detail, but there was a problem about getting that car delivered in Detroit, is that right, and it had not yet been delivered in Detroit at the time you talked to Mr. Marcin, is that right?

THE WITNESS: That's right. Nine months had gone by from the original order, time of the order.

1B

THE COURT: All right. Nine months from the time of the order, according to your testimony.

THE WITNESS: Yes.

THE COURT: And you mentioned the term drop-shipment. What does the term drop-shipment mean to you?

THE WITNESS: Let me correct myself. It may not have been nine months. It may have been eight months.

THE COURT: Eight months. Very, very simply, without a lot of discussion, what does drop-shipment mean?

THE WITNESS: Drop shipment means that a dealer who is in New Jersey can order a car and have it delivered to Des Moines, Iowa, to a dealer with which he has an arrangement, and that dealer does a make ready on the car, does a courtesy delivery. In other words, he washes it, cleans it up and makes it ready for delivery.

THE COURT: And that is a drop shipment?

THE WITNESS: That is a drop shipment.

THE COURT: Why don't you go ahead and describe your conversation with Mr. Marcin, please?

THE WITNESS: Okay. I reiterate very

quickly that Mr. Econ had referred me to him, Mr. Marcin, to handle this matter and to arrange for this drop-shipment.

I told him of Mr. Stolarski's letter to the president of General Motors, that he has talked to Shore Chevrolet and they didn't know anything about it and something had to be done to make these arrangements.

The arrangements that we made with your supplier was that it was all right and we were under the assumption that this was going through and it was going to be drop-shipped at Shore Chevrolet and all of a sudden this cropped up and this has created this problem in which I was referred to him to handle it.

He said that -- first of all, hesaid the dealer at which the car was to be drop-shipped would have to agree to take the drop-shipment, and General Motors would have to approve it, first of all. There were other remarks made which I can't, you know, say, and I will --

THE COURT: That isn't proper for you. That is a legal matter which I have gone into.

THE WITNESS: I am not saying that.

THE COURT: You understand the grounds.

All right, no comment on that, please.

Is there anything else?

THE WITNESS: Okay. He said that he would see what he could do. I'll have to make arrangments with Shore Chevrolet to find out whether they were willing to do the courtesy delivery or take the drop-shipment, which I did.

I called --

THE COURT: Which who did? I didn't understand the word.

THE WITNESS: Which I did. I called Wemsler at Shore Chevrolet. He was a manager at Shore Chevrolet, and he agreed to do a courtesy delivery for $50.

THE COURT: What is this name? How do you spell that?

THE WITNESS: Wemsler.

THE COURT: How do you spell that?

THE WITNESS: I believe it is We-m-s-l-e-r.

THE COURT: All right, Mr. Person, go ahead.

Q Was there anything subsequent to that?

A Yes, I then made the necessary calls assuring everyone that we would have this drop-shipment, and I called Mr. Marcin back again, told him that I had called Wemsler of Shore Chevrolet, they were willing to do a courtesy delivery and would he please make the arrangements for the car to be shipped to Shore Chevrolet in Detroit so Mr. Stolarski could pick it up there.

He then went into a discussion about GM has to approve this and I don't as yet have the approbal for it and so on and so forth, and there were other discussions, but it was left up in the air as to whether he was going to allow this drop-shipment to take place at Shore Chevrolet.

Mr. Stolarski was getting, you know, anxious to get delivery of his automobile, and I told Mr. Marcin that we wanted this done. He said, well --

MR. KLEINBARD: Can't hear the witness.

THE COURT: Keep your voice up.

A (Continuing) I told Marcin that Mr. Stolarski was anxious to get his car, we were anxious to get this thing expedited or words to that effect, and he said he didn't have the authority, GM has to approve it, it has to be in their best interests or whatever, but as of a certain point I felt that this was going to go through.

Later, in subsequent events that took place, they decided that --

THE COURT: Who is "they"?

THE WITNESS: Marcin said he could not drop-ship the car to --

THE COURT: You had another talk with Marcin?

THE WITNESS: I had another talk with Marcin.

THE COURT: Tell us about that.

THE WITNESS: He said that he would not drop-ship the car to Shore Chevrolet, the only thing he would do would be to deliver it to the dealer in Elmer, New Jersey. The car was built to specifications. It was a car that we had ordered, but he would do nothing but ship it to Cerota Chevrolet, which he did, and we had to make arrangements for Stolarski to come down and pick it up, which he had a friend come down, we paid the expense of his coming down, and the car was picked up and delivery was made from Cerota Chevrolet's show-rooms in Elmer, New Jersey.

The car was put, incidentally, in the name of Stolarski as if it were sold from Cerota to Stolarski.

MR. KLEINBARD: There is no question.

THE COURT: I don't know where we need to go.

MR. PERSON: Just one point more, your Honor, then we will finish.

MR. KLEINBARD: He asked for a conversation with Mr. Marcin, as far as I am aware.

MR. PERSON: He is just following up with what happened with the car.

I have an Exhibit 626. Any objection?

MR. KLEINBARD: No objection.

THE COURT: Okay, 626 is received.

xx (Plaintiffs' Exhibit 626 received in evidence.)

2A Q Mr. Maiorana, I am showing you Exhibit 626. Can you state what that is?

A This is a car invoice made out from Cerota Chevrolet-Oldsmobile, Inc. to Mark A.Stolarski. We were not allowed to sell this car to Stolarski.

MR. KLEINBARD: I move to strike that.

THE COURT: It is stricken. It is beyond the question and not responsive.

Q Is there anything unusual about the procedure for putting the name of the customer on that invoice by the franchised dealer?

A Yes.

MR. KLEINBARD: I object to that.

THE COURT: Overruled.

MR. KLEINBARD: It is a GM franchisee and not a Nabcor franchisee.

THE COURT: Overruled.

You can ask him if the invoices of the dealers in these situations were normally to Nabcor and if this is different.

Q How were the invoices from GM dealers made out when Nabcor purchased a car from the dealer?

THE COURT: Normally.

Q Normally.

A Normally made out to Nabcor.

Q Was this thing abnormal?

A Yes.

Q Did Nabcor pay for the car itself?

A Yes. We paid for the car.

Q Did Nabcor receive payment from Mr. Stolarski for the automobile?

A Yes.

Q Are you familiar with Kline Pontiac?

A Yes.

Q Who is the principal of Kline Pontiac?

A Bill Kline.

Q Do you know him?

A Yes.

Q How long do you know him?

A Since 1965.

Q Did there come a time when you had any arrangements with Kline Pontiac to acquire automobiles?

A Yes.

Q Can you state approximately when?

A In 1969.

MR. PERSON: We have this document Plaintiffs' Exhibit 574. This is a Kline Pontiac Company letter dated August 20, 1969, to Mr. Maiorana, Nabcor, Inc., Frank Maiorana, and just summarizing it --

THE COURT: What is the exhibit number?

MR. PERSON: 574, August 20th, 1969.

(Mr. Person read to the jury from Plaintiffs' Exhibit 574 in evidence.)

Q Did you have a meeting?

A Yes.

Q Did you go to such a meeting?

A Yes.

Q Is there anything in this letter that is contrary to any discussions you had at the meeting?

A Yes. The rental aspect.

MR. KLEINBARD: I object, your Honor. He has to go into the hearsay with respect to this subsequent conference in order to say anything at all about the extent to which the conference does or does not conform to what is in the letter.

THE COURT: I thought we discussed this at the beginning of the day yesterday. I don't want to repeat all that discussion. It was at least an hour that we spent talking about this.

Q Did you operate a rental agency?

A No.

Q Had you ever told anyone that you operated a rental agency during that period of time?

A No.

MR. PERSON: Plaintiffs' Exhibit 112 is a letter from the Pontiac Motor Division dated March 16, 1970. It is from Gerald J. Burt of the Philadelphia zone of Pontiac to Mr. J. P. Ware, also the Philadelphia zone of Pontiac. I am now going to read the letter.

THE COURT: What is the exhibit number?

MR. PERSON: 112. It is dated March 16, 1970.

(Mr. Person read to the jury from Plaintiffs' Exhibit 112 in evidence.)

MR. PERSON: This letter is dated April 6, 1970. It is Exhibit 110, your Honor. This is from Mr. Culter to Mr. Ware.

(Mr. Person read to the jury from Plaintiffs' Exhibit 110 in evidence.)

MR. KLEINBARD: Your Honor, I will object to this line of questioning on the ground that yesterday Mr. Person stated -- and I think it has always been his position and Nabcor's position -- that they never qualified for a fleet rebate and no sales to Nabcor ever qualified for a fleet rebate, and now we are going through a whole session of letters that go to demonstrate exactly what he was willing to say all along.

MR. PERSON: They have coupled in the right ro receive the car with a fleet allowance, that there are cars that are being stopped here as a result of a fleet allowance.

MR. KLEINBARD: It is obvious --

THE COURT: Wait a minute. I would like to know --and I assume the jury would, too -- whether this turned out that the cars were stopped. So far I have heard, the very last thing you read in Exhibit 110, the question is whether the vehicles are available for the allowance. That was the question under discussion. There is a reference to orders being held. I must say to you, if it doesn't turn out that something was being held for reasons corresponding to your contentions --

MR. PERSON: How long a period?

THE COURT: Mr. Person --

MR. PERSON: That's what hurts the business.

THE COURT: I am not trying to argue. I am trying to argue the relevancy of this, not the merits. We are hearing a lot of documents and it ends up that the problem was about the claim for fleet allowance, and that that generated inquiry, and it generated even a temporary hold-up because of a disagreement on the terms of the sale, whether the purchaser was going to get a fleet allowance or not. If that's the way it turns out, it is all a total waste of time.

MR. PERSON: Nabcor did not make application for this fleet allowance. These were Nabcor orders held up.

THE COURT: What are they talking about? We have started in this line and you can finish it, and it may turn out to be a waste of time and it may not. I have not the faintest idea, at this point.

MR. KLEINBARD: I note my objection for the reasons stated.

THE COURT: We are half-way through.

MR. PERSON: Plaintiffs' Exhibit 111 is a letter dated April 15, 1970, from Mr.Ware in Philadelphia to Mr. Culter in Pontiac, Michigan, about Kline Pontiac.

(Mr. Person read to the jury from Plaintiffs' Exhibit 111 in evidence.)

MR. PERSON: There is a note at the bottom: W.Johnson, Fleet Department. Nabcor not in the National Account List.

I have Exhibit 127, which is an order by Kline Pontiac, which has all sorts of X's in the place where the dealer usually indicates whether the car was stock, whether it goes into stock or it is a fleet order.

I have a card as Exhibit 113, a card that relates to the diverted automobile, and it is a zone inventory control car under manufacture, and it says: Now in zone warehouse.

THE COURT: What do you mean when you say a diverted automobile?

MR. PERSON: The automobile that was diverted on its way to the dealer wound up in the GM zone wharehouse and the dealer was not advised of that.

MR. KLEINBARD: Your Honor, I object again to this whole line and ask that it be stricken. I think the testimony that has been read revealed exactly what your Honor said it would reveal. There was not a proper identification of this as a fleet account. One sentence was read here: When Mr. Burt, who is of Pontiac, was advised it was for Nabcor he coded the order and processed it.

We are going through a whole bunch of letters that prove absolutely nothing. Until the information was available to General Motors or to Pontiac they could not process them as a fleet.

MR. PERSON: This is according to Defendants' Exhibit J, that there are 15 orders received from Kline up to March 13, 1970. At that point, which is about the date of the first letter -- the first letter was dated March 16, 1970. The next order received by Mabcor was 5/21/70 from Kline.

2 THE COURT: Mr. Person, I am sitting here and the jury is sitting here. I am constrained to say that anybody hearing the testimony on this case should be alert to see, to keep in mind, the issue.

I think the jury had to keep very clearly in mind -- I'm not trying to give you your final instructions on the law -- that in viewing the evidence as we go along I think you need at this point some guideline.

General Motors, as you have heard in the opening statements, had certain requirements for a particular kind of transaction, that i[illegible] transaction where a dealer would sell on a fleet basis -- and I may be using the wrong words -- but where there would be sales on a fleet basis and where General Motors would pay an amount of money called a fleet discount,or whatever it was, to the ultimate buyer. The Chevrolet dealer would sell 100 Chevrolets to New York Telephone Company and General Motors would presumably, because of the volume of the transaction, give New York Telephone a check for $50 times 100 at some point. It's a form of benefit because of the volume, I suppose.

MR. PERSON: It does not relate to volume.

THE COURT: It does not relate to volume. I won't try to get into the purpose, but there was this transaction.

I don't think anybody contests that there is anything illegal about that. General Motors can have its requirements in order to qualify for that, and it can be just as strict and ask for verification and check and do everything it wants to, as long as it is enforcing its requirements before it pays that $50 discount. There may be letters and telephone calls and checks and audits and so forth and so forth and so forth, but I don't think anybody contends that there was anything illegal.

If that's what is going on and that's what is presented to you, of whatever interest it may or may not be, that is just a business-type transaction and I don't think anybody claims it is illegal.

There is another thing called a fleet certificate. It didn't involve necessarily the payment of money or discount or anything. That has been described to you and I think it's been stipulated that the fleet certificate was something that again General Motors had certain requirements that had to be complied with before you could get a fleet certificate. The fleet certificate had certain things attendant to it which you might or might not feel its benefits. You were able to get your people get training manuals or go to the General Motors service school or whatever. They said this thing called a fleet certificate and again there were requirements. General Motors could write letters and check and double check and triple check and insist on the requirements. There was nothing wrong as far as I know in this case with that. If that's what you are hearing about at any state, enforcement by General Motors of its requirement for certain qualifications before somebody gets a fleet certificate, that in and of itself is not illegal. I think you have to keep that in mind.

So if you hear evidence about Nabcor not having a fleet certificate, that's a fact of life. It never did. It's been conceded they never were entitled to it as far as I know.

The question in this case -- and I think you have to be alert to focus on this -- was General Motors doing other things besides simply enforcing its requirements for fleet certificates and fleet discounts; was it going to dealers and getting the dealers to refuse to sell, period. Was it preventing dealers from freely and normally entering into transactions according to their wishes with Nabcor?

The law is that the dealers were supposed to be free to deal with Nabcor or John Jones or whoever, according to any terms those dealers wanted to deal on, and if General Motors interfered with that freedom, then that's what the case is about.

I make that speech. I guess I have made that speech two or three times so far, but it is necessary for you, I think, to understand these issues because a lot of proof is coming in and the way you can thread your way through this case is to keep it very clearly in mind.

There was a mention of an allotment. An allotment has suddenly come into the case. I don't know what that has to do with the case. But again, be patient, and when the evidence is in you are to view the evidence and hope that by the time it is over it will all be tied together one

Q These activities that you have described in your testimony so far, was Nabcor's business affected in any way?

A Oh, absolutely, it was affected.

MR. KLEINBARD: May I hear the question?

THE COURT: Yes.

(Question read.)

MR. KLEINBARD: I don't see what he means by what activities, your Honor.

THE COURT: Just read the question. See if you have an objection or you don't. I will hear the question.

MR. KLEINBARD: I object because I don't know what it means, your Honor. I don't know what "activities" refer to.

THE COURT: I will sustain the objection. It's conclusory. You can have him testify as to what in fact happened to Nabcor or any dealer or whatever. I will sustain the objection as to the form of this question.

Q Subsequent to some of these activities that you have testified about, could you describe what Nabcor's business became?

MR. KLEINBARD: I have the same objection.

THE COURT: Overruled.

A All right, I think I have testified previously in this court that we had in 1966 a program where we were expanding very rapidly. We opened an office in New York.

THE COURT: I think you have already testified.

THE WITNESS: In the evidentiary hearing.

THE COURT: Wait a minute. I think you testified in court fully, at this trial, before this jury, about the beginning of Nabcor.

Now, I think he is asking you about what happened in subsequent periods, and the question is very general, but if you can answer it and save time and just come to the end of the story, if there is an end, why, do that.

THE WITNESS: Okay.

Our business was affected by these activities in that the brokers were demoralized. We had training programs and these training programs were set so that each week the brokers came in and we gave them lessons in the automobile business which were designed over a period of sixteen weeks they would have been --

THE COURT: You have already testified about that.

THE WITNESS: Fine.

However, as a result of some of these activities, they were starting to sell automobiles. There were delays in the automobiles as a result of some of these cancellations by the dealers; the customers were giving the brokers a multitude of problems which they would bring to us.

We had to curtail some of the activities which would be beneficial to the brokers, to try to handle these problems for them.

It created a huge burden on Nabcor to try to hold this whole thing together, demoralized our entire organization. We lost a lot of brokers. We lost a lot of our car sales. We had over 300 orders in the Fall of 1966. I don't think we delivered 10 per cent of those orders as a result of cancellations.

These orders going out to the customers of our brokers, each one of them would have been proof that we could deliver cars. It would have brought more customers in. It would have created an expanding business.

MR. KLEINBARD: Your Honor, he is reaching a totally speculative point in his testimony. I don't know how he can say what each order would have done and what it would have brought in. I thought the question was what happened to the business, which calls for a very simple answer.

THE COURT: I thought he testified earlier that they, in effect, ceased their auto business in 1973.

MR. KLEINBARD: That's right. That is where I thought he was going.

MR. PERSON: '73.

THE COURT: This kind of generalized con0 clusory description is really not evidence.

Q Could you state whether the Nabcor was affected in its financial status?

A Why, certainly.

MR. KLEINBARD: Again, it is purely a conclusion on his part, your Honor. We have been through this in part at the previous hearing.

THE COURT: Let's take a recess.

Can the jury retire? I will speak to the attorneys.

(Jury left the courtroom.)

THE COURT: He simply cannot give this kind of a speech. It is improper in every way, this broad brush treatment. I don't know what the defendants can do in response to that. It just raises -- I mean, the whole training program, the demoralization, 270 unfilled orders or so, all of which could have happened from a multitude of reasons. He is testifying to the ultimate conclusion that the activities that he has testified about caused all this.

Well, it is just an impossible thing. You are going back to 1966 and forward, I suppose, and some of these activities occurred at various times, and it is just wrong in every way, and I think the fact is that the case stands or falls on whether there was the activity by General Motors complained about.

Now, if there was, then we come to damages, and Heaven knows, that will probably be a can of worms just like the rest of the issues in this case, but at least I am not going to permit it to be proved by this kind of broad brush treatment.

Damages are going to have to be thought out with some hard thinking and there is going to have to be proper evidence.

Maybe the best thing to do is just confine this to liability. I don't know.

But all I am saying to you right now is this testimony, he just can't do it.

Now, I would suggest, I think that the --

MR. KLEINBARD: May it be stricken, your Honor?

THE COURT: -- that the really important thing here is to find out whether General Motors did the things charged, and I really have a feeling, maybe it is unwarranted, but I think that something has got to happen to bring this case to a head. There has got to be some light thrown, and I hope tomorrow will do it. I hope if these dealers get in here there will be some light thrown, and either you have got a case or you don't, and if you can prove liability, I think we can figure out damages some way without going on and on and on.

I think you ought to, without prejudice to proving damages, I think Mr. Maiorana ought to be cross-examined. I think he ought to be cross-examined now, and I expect that your offer of producing dealer witnesses will go forward tomorrow the first thing, and maybe that will illuminate this case more than some other things have.

MR. PERSON: Your Honor, we have served two subpoenas --

THE COURT: I thought you were going to serve about six.

MR. PERSON: Well, we served naming people in the subpoenas.

THE COURT: Okay. I get you.

MR. PERSON: Two different subpoenas, one in Camden, one in Yonkers, today.

THE COURT: Today?

MR. PERSON: Yes.

THE COURT: I thought you were going to serve them yesterday.

MR. PERSON: We only got them prepared yesterday, your Honor, and one of them is scheduled for tomorrow and one for Monday.

MR. KAPLAN: Which is which?

MR. PERSON: Ruckle for tomorrow; Stewart --

THE COURT: Who is coming down from Ruckle?

MR. PERSON: Mr. Robert Dillon.

THE COURT: How about Stewart?

MR. PERSON: Stewart was in Long Island today, so we don't know.

THE COURT: So you had the Rohrer subpoena returnable Monday?

MR. PERSON: Yes, your Honor.

2 THE COURT: I think you had better get on the phone now and just tell Dillon that I am directing that he make every effort to get Stewart in here tomorrow. They should both be in here. That is an order of this court. And I want to have them both in here tomorrow.

MR. PERSON: There was also a Mr. Grimm mentioned.

THE COURT: From Ruckle.

MR. PERSON: Yes, sir.

THE COURT: What about Grimm? What is the story on Grimm?

MR. PERSON: Two and a half years he hasn't worked there.

THE COURT: Well, if you get Stewart and Dillon, that's something. Then you have got the cross-examination of Mr. Maiorana.

I think let's take a recess and get on with it.

MR. KLEINBARD: May I just, for the record, move to strike all of these conclusory statements?

THE COURT: Yes, I will strike it and I will so instruct the jury.

Okay.

(Recess.)

4A

(Jury in box.)

THE COURT: We have had a discussion of the answer which Mr. Maiorana started to give about the alleged effect on his business, and I am striking that simply because it is kind of a broad-brush treatment linking different transactions together, orders, and so forth. We cannot have it that way. If we get into that it has to be more precise. We will defer that.

Mr. Maiorana is now going to be cross-examined.

You may proceed.

CROSS EXAMINATION

BY MR. KLEINBARD:

Q There was a hearing held in this case beginning October 6th, just before the present jury trial began, correct?

A Yes.

Q At that hearing you gave testimony under oath in the same courtroom, did you not?

A Yes.

Q You asked about your meeting with Mr. Belcher?

A Yes.

Q You described at some length your first meeting

Q I'm sure of that.

A If that was intended to be facetious, Mr. Kleinbard --

THE COURT: Please.

A -- it's noted.

Q I made a statement, Mr. Kaiorana. You can make of it what you will.

THE COURT: I will strike the statement. Please refrain from that.

Q Mr. Maiorana, there was no reference to your pretrial examination in any question. I am merely pointing out to you differences between your pretrial, the evidentiary hearing testimony, and the first version of your Belcher conversation yesterday. You gave two versions and I'm pointing out the difference.

THE COURT: The jury has that. Let's not have any more argument on it.

Q You said, turning to your conversation with Rohrer, or about Rohrer, after your lawyer had reminded you about Rohrer Chevrolet, at page -- this is the second time you are now discussing Belcher -- yesterday, at page 444, line 18 -- I'm sorry, line 20, the question was asked:

"In your discussion with Mr. Belcher, did you have any discussion of Rohrer Chevrolet?

"A Yes. I told him that we had been shut off."

THE COURT: Where are you reading, please?

MR. KLEINBARD: 444, line 18, there is a question. Line 10 is the answer.

THE COURT: Okay. Would you start again, please.

MR. KLEINBARD: Sure.y.

Q "Q In your discussion with Mr. Belcher, did you have any discussion of Rohrer Chevrolet?

"A Yes. I told him that we had been shut off, that they traced the serial numbers from the Buffalo zone to the Philadelphia zone. We had delivered, I believe it was, two or three cars to the Buffalo area and delivered them to our distributor there, who delivered them to his customers, and they traced the serial numbers back to Rohrer Chevrolet, and stopped them. The Philadelphia zone stopped them from selling us any more cars."

Now, your distributor in the Buffalo

area was General Automobile Sales & Leasing, is that correct?

A General Auto Sales & Leasing, yes.

Q And it is your testimony, in giving this second discussion of your conversation with Mr. Belcher, that the Philadelphia Chevrolet zone had stopped Rohrer Chevrolet from selling cars to Nabcor?

A What was that statement, Mr. Kleinbard?

Q Is it your testimony today that on or about December 14th you told Mr. Belcher that the Chevrolet Philadelphia zone had stopped Rohrer from selling cars to Nabcor, giving you your third opportunity?

A In my testimony? Yes.

MR. KLEINBARD: May I have Defendants' J, please? This is an exhibit which is in evidence.

While Mr. Silverman is distributing that, I should explain perhaps that this is a summary of Nabcor's police books, showing the purchases of cars by Nabcor from GM franchised dealers in the Philadelphia area from July 9, 1966 to December of 1970. And I point out that according to Defendants' Exhibit J Rohrer Chevrolet sold Nabcor seven cars in November, you will find that on page 3, and Rohrer sold Nabcor additional cars on December 4th, December 7th, December 11th and December 12th. That is all 1967. And two cars on December 27, 1967. That is all on page 3, ladies and gentlemen of the jury.

I suggest to you, your Honor --

THE COURT: Please do not suggest. Ask a question or else wait and argue to the jury in your summation.

MR. KLEINBARD: All right.

BY MR. KLEINBARD:

Q Did you correctly state the facts -- withdrawn.

Isn't it a fact that you misstated the facts of Nabcor's dealings with Rohrer to Mr. Belcher, to the effect that Rohrer had shut off Nabcor as of the time that you went to see Mr. Belcher?

A No, I did not misstate the facts.

5B MR. KLEINBARD: All right, the jury can note the sales in December, including cars on December 11th, 12th and two more on December 27th.

Q December 27, 1967, is after your meeting with Mr. Belcher, isn't it?

A Yes, it is.

MR. KLEINBARD: I would like to offer at this time, your Honor, Defendants' LLLL, which is an invoice from Rohrer Chevrolet to Nabcor, Inc., dated January 10, 1968.

THE COURT: Any objection?

THE WITNESS: I would like to --

THE COURT: Any objection, Mr. Person?

MR. PERSON: No objection to Exhibit LLLL.

THE COURT: Received.

xx (Defendants' Exhibit LLLL received in evihence.)

MR. KLEINBARD: Ladies and gentlemen of the jury, your Honor, this is a further invoice from Rohrer Chevrolet to Nabcor dated January 10, 1968, indicating that Rohrer sold a Chevrolet --

THE COURT: Let's not argue. I have got to request you to make the briefest objective summary of these exhibits or read the exhibits and not --

MR. KLEINBARD: All I am going to say is, it indicates a sale, your Honor. I can't say it any shorter than that.

THE COURT: Okay.

MR. KLEINBARD: Indicating that Rohrer sold a Chevrolet to Nabcor on January 10, 1968.

Defendants' Exhibit J, which everyone, I hope, still has in their possession, indicates that from February, '68, until 1970, Nabcor purchased over 70 Chevrolets from Rohrer Chevrolet.

Q This is the company that you say was shut off from dealing with Nabcor?

THE COURT: Is that a question?

MR. KLEINBARD: Yes.

THE COURT: What is the answer?

A The answer to that is that we were shut off. Rohrer Chevrolet then decided to allow us to buy automobiles from its own retail allotment,that the manufacturer had shut off any fleet orders to us from that point on.

Jack Snyder called at the request of Mr. McIntyre and got some of these cars released.

MR. KLEINBARD: Your Honor, this is all hearsay.

MR. PERSON: Mr. Kleinbard, you asked him the question and he wants to give you the answer. Do you want the answer or not?

MR. KLEINBARD: I don't want a hearsay answer.

MR. PERSON: Don't ask a question calling for it.

MR. KLEINBARD: The questions don't call for it. They merely call for whether they were shut off or not, and the answer is they weren't shut off.

MR. PERSON: Mr. Kleinbard, you just asked the question. Could you answer the question --

THE COURT: Just a minute. Take it easy, all of you.

It seems to me, Mr. Kleinbard, that you have got to be content, if you are resting on the records of transactions which is not hearsay, indeed, it is in evidence, these are matters of record, you can rest on that.

MR. KLEINBARD: All right.

THE COURT: If you want to ask him if it is true or if you want to get into explanations, then I think that you would, in effect, be drawing out an

NATIONAL AUTO BROKERS CORP.,
et al.,
Plaintiffs,
vs.
GENERAL MOTOR CORPORATION,
et al.,
Defendants.

70 Civ 5 421A

Before: HON. THOMAS P. GRIESA, D.J.,
and a Jury.

New York, October 29, 1976;
10.00 A.M.

Trial resumed.

- -

(Jury not present.)

MR. KAPLAN: As Mr. Kleinbard informed you yesterday, your Honor, General Motors was served yesterday afternoon with a very onerous subpoena duces tecum by the plaintiffs which we move to quash at this time.

It has 29 specifications. Rather than to start to go through them one at a time, I think your Honor will quickly see that with a few minor exceptions which we can certainly work out among ourselves this is basically an attempt to begin a discovery in this case again.

Some of the items in here --

THE COURT: It is completely out of order to serve a subpoena on the party during the trial.

Now, there should have been discovery before the trial and during the trial all that remains is simply the mechanics of getting the documents in the right hands at the right time, and I am quashing the subpoena, and the lawyers in the case are responsible for anticipating their needs for documents.

If you have any need for documents and there is something that General Motors has that you need, well, you talk to Mr. Kleinbard and Mr. Kaplan, Mr. Person, and I am sure there will be no problem.

But there is not to be a kind of commencement of some kind of file search at this point. It just can't be done.

MR. PERSON: All of this has been asked for previously and not obtained.

For example --

THE COURT: You had plenty of time to ask for an order from the Court enforcing compliance with General Motors discovery obligations, and I am not starting discovery now.

MR. PERSON: I just might point out, your Honor, for example, that they never produced the documents shown when --

THE COURT: Why weren't you up here before? It's awfully late. I mean, I remember on numerous occasions pleading with the attorneys to make applications for assistance in discovery, and I really never got much of an--thing along that line. This just isn't the way to handle it.

If you have got a request for documents on specific things you give it to Mr. Kaplan and Mr. Kleinbard, they'll try to accommodate you, and if there is something that you haven't gotten, something even that you haven't thought of, it won't be the first time in a trial of an action. I don't mean that -- we all have need for things at a trial that we have never thought of before, and people have to scramble around to get it, but not a wholesale demand of this kind.

MR. PERSON: It's only in respect to this wholesale issue that they are raising in their defense that these matters for the motion part have come up.

For example, the responsibility, that is, the position of various officials of GM. They are making representations --

THE COURT: You had the burden -- look, we have had two minor instances or two or three instances; we had the problem about Econ, the problem about Marcin, which I resolved in your favor, and then there was one other fellow --

MR. KAPLAN: Mr. Zibold.

THE COURT: Zibold.

MR. KAPLAN: Your Honor, I should say that consistent with your remarks, where there is a real problem about some specific piece of information we are more than happy to be forthcoming. This sort of request that says bring into court all documents previously produced to the plaintiffs, however, is the sort of thing that is more than offensive.

MR. PERSON: That is what they did to me, your Honor, and I was sort of obliged to comply, which I did.

MR. KAPLAN: I dispute that, but I don't know that there is any point in the dispute.

THE COURT: We just can't have it this way. That is all there is to it. The subpoena is quashed.

(Recess.)

Q And what else do you have?

A Suppose I go through the things that you request and I will tell you what I don't have.

Q Fine.

A No. 2, you ask for a document reflecting GM's policy on drop-shipments. I don't even know whether there is such a thing in existence.

Q Okay.

A Okay? Copy of any fleet agreement with GM or any form thereof. I don't know of any fleet agreement with General Motors.

Q Have you ever heard of a fleet agreement before?

A There is a fleet certificate.

Q Right. Have you ever heard of a fleet agreement before?

A I think it is a matter of nomenclature, what you call it. I would consider a fleet certificate might be a fleet agreement, but I have nothing to do with that.

Q Have you talked with anybody about fleet agreements and fleet certificates recently?

A Yes, my leasing company has a fleet certificate.

Q Right. Have you talked with anyone about fleet agreements recently?

A No.

Q Nobody?

A No, sir.

QAnd you are unfamiliar with the term or are you familiar with it?

A I don't know what you mean by a fleet agreement. In other words, if I make a deal with ABC Leasing Company to lease or to sell them a fleet of automobiles, to me that is a fleet agreement. I am making it with the customer. So I really don't know what you mean by a fleet agreement.

A fleet agreement I consider an agreement that Ruckle Pontiac would make with possibly a client for one car, five cars or something like that. That is what I would consider to be a fleet agreement.

Q You have never heard of any fleet agreement with General Motors itself, have you?

A No.

Q You have never come across it?

A Never come across it.

Q Have you ever heard whether there were any restrictions at any time imposed upon the resale of a car purchased on a fleet basis?

MR. KAPLAN: I object to the form, the phrase "fleet basis." I just think Mr. Person could be a little more specific.

THE COURT: Yes, I will sustain the objection.

Q Have you ever heard of any restrictions imposed by GM?

A No, to the contrary, counsel, we have been informed by General Motors that once we get the automobile we can do anything we want with it, it belongs to us. We can take it out on the street and burn it, or sell it to anybody else, it is our automobile. We can do whatever we want with it.

Q When did they inform you of that?

A I don't specifically recall.

Q Have you met with Mr. Kaplan before this?

A Yes, I met with Mr. Kaplan.

Q When?

A I initially met with Mr. Kaplan when we were a defendant in this same action, and he was, I think, the attorney for all of the plaintiffs. I think that was the first time I met with Mr. Kaplan.

Q And the second time --

MR. KAPLAN: Certainly not for the plaintiffs, your Honor.

THE WITNESS: I mean for the defendants. I am sorry. We were a defendant.

Q And the second time?

A I didn't keep a diary of a meeting with him.

Q How many did you have?

A I wouldn't know.

Q Did you ever talk about the case?

A Yes, it would be rather silly to meet with him and not talk about the case since we were a defendant.

Q I agree with you. And you were interviewed about the case, too, weren't you?

A Certainly, my attorney was involved in the thing.

Q Did you ever have any connection with the Greater New York, Long Island & Westchester Automobile Dealers Association?

A Yes. I have been a member of it since I became a dealer in 1957. I was a director of it and I was president of it about three years ago.

Q And when were you a director of it?

A I don't know when it started, but I have been a director probably for 10 or 12 years.

Q Are you still a director?

A I am still a director, yes.

Q 12 years from now would go back to about 1965, '64.

A Probably before that. I would assume it's probably around '61, '62, when I became a director.

Q Did you ever receive communications from the Automobile Dealers Association?

A Yes, we receive a weekly bulletin from the Association as a dealer.

Q And you read the bulletin, I gather?

A Yes, I read it.

MR. PERSON: I have Exhibit No. 74-A. Any objection? I am offering it in evidence.

Q First of all, I will show it to you, Mr. Dillon.

THE COURT: What is the number?

MR. PERSON: 74-A, your Honor.

Q Have you seen that bulletin before, that letter to presidents and directors?

A Counsel, this goes back to October of 1966, which is 10 years ago.

Q Right. The case goes back that far.

A It does go back, and I will tell you this, I can't remember 10 years ago whether I looked at a letter or not.

Q Did you receive communications from the Automobile Dealers Association during that period?

A I told you I received communications from them.

MR. PERSON: I offer this letter in evidence, which is dated October 21, 1966, addressed to directors and past presidents of the Greater New York, Long Island & Westchester Automobile Dealers Association.

THE COURT: Any objection?

MR. KAPLAN: If it is offered solely as something which Mr. Dillon may have seen, there is no connection to us, of course.

THE COURT: I will receive it on that basis.

xx (Plaintiffs' Exhibit 74-A received in evidence.)

(Mr. Person read from Plaintiffs' Exhibit 74-A to the jury.)

Q Do you recall, Mr. Dillon, having read that?

A As I told you, that is 10 years ago and I can't recall items that I read 10 years ago.

Q Did you ever attend any meetings of the New York ADA?

A Yes, sir, I was a regular attendee at the meetings.

Q Do you recall whether Nabcor was ever discussed at any of these meetings?

A Yes, the question of Nabcor came up at one meeting.

Q I see. Are you familiar with any minutes that were made at that meeting?

A I'm familiar with the minutes because they were pointed out to me in the course of our being involved in this case.

Q Who pointed them out to you, other than your own attorney, if it is your own attorney?

A No, it was my own attorney.

Q It was. Was your attorney in this action the same attorney that was at that meeting that you are referring to?

MR. KAPLAN: Objection, your Honor.

A Which meeting I am referring to?

Q Who is your attorney? Who was your attorney in this action?

A Webster, Sheffield, et cetera, et cetera.

MR. PERSON: Exhibit 627. I'm offering it in evidence.

MR. KAPLAN: I object on the ground it is hearsay.

THE COURT: May I see it?

MR. KAPLAN: And irrelevant to General Motors.

THE COURT: I will receive it as to the Association.

MR. KAPLAN: The Association is not a party, your Honor, and if I might have a question on voir dire, perhaps we could clear it up.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q Mr. Dillon, were any General Motors personnel ever present at any meeting of that Association that you ever attended?

A No.

MR. KAPLAN: I object, your Honor.

THE COURT: Well, there is nothing here indicating the presence of anyone from General Motors.

MR. PERSON: There is a reference

in those minutes to Thompson --

THE COURT: Yes, I know that. Let me see the lawyers at the side bar.

(At the side bar.)

MR. PERSON: Ruckle Pontiac is a co-conspirator so --

MR. KAPLAN: It isn't even their document.

THE COURT: Dillon was present.

MR. KAPLAN: Your Honor, under your ruling co-conspirator hearsay is out, and past this co-conspirator hearsay there is no showing it has any connection to us, quite beyond this hearsay problem. Nobody from General Motors was there. The witness testified nobody from General Motors ever was there.

Now, the problem, of course, is that this is potentially a very prejudicial document and whatever these dealers did or did not do, without General Motors, is not General Motors' problem and I think to put into evidence a document or suggest that the dealers were talking about Nabcor in some meeting is really highly improper. But no General Motors personnel were involved.

THE COURT: Is there any defendant here at the meeting?

MR. KAPLAN: Not at all.

MR. PERSON: One of the defendants, Ruckle Pontiac, was there.

THE COURT: Ruckle isn't a defendant now. He's not in court.

MR. PERSON: He's a co-conspirator.

THE COURT: Co-conspirator with whom? Where is your showing of a conspiracy?

MR. PERSON: This is a part of it and the letter from --

THE COURT: It doesn't indicate anything about a conspiracy?

MR. PERSON: The letter from the New York ADA wound up in the files of General Motors.

MR. KAPLAN: So what? Two years later.

THE COURT: Now, look here, let's exercise some sense. People can talk about their competitors. They can be worried about them, they can check on them. It's a competittive took, and it doesn't mean that they are conspiring to stop them and doing anything illegal and the trouble that I'm constantly worried about in this case is sliding over into -- trying to get improper inferences drawn that just don't belong.

I thought you brought this man here to talk about his dealings with General Motors. Now we are going all around Robin Hood's barn.

MR. PERSON: This is background for his dealings. He was active and the implication is that there are dealers and others who brought pressure on him for having dealt with him.

MR. KAPLAN: That is exactly the problem. Suppose that were true; we didn't do it and there is no connection to us, and if the dealers violated the antitrust laws that doesn't bind us. That is what we had the hearing for.

THE COURT: What is he going to testify about? That is the crucial thing. I'm very concerned about having -- you know, there are all kinds of things brought up at this trial that -- there is a kind of an innuendo, kind of guilt by association, all kinds of things that are hovering around that are potentially very dangerous. We have a certain limited number of defendants here. The trial before this jury is against those defendants, it is not against Ruckle, it is not against the Long Island and New York Association. It is not against anybody at this meeting.

MR. PERSON: But the issue of why Ruckle terminated is relevant and he's here and his participation with respect to that Nabcor is important.

THE COURT: But the point is what did he --

MR. PERSON: He was at that meeting.

THE COURT: Look, if he terminated because of an agreement in the Long Island Association that doesn't bind any defendant in court. You show me what he did with General Motors and then I will worry about it.

MR. PERSON: I'm trying to show two people, General Motors on one hand and Nabcor on the other -- certainly there is background.

THE COURT: He's not a defendant any more. So what if he did something with Nabcor?

MR. PERSON: So that it is the context of what he did before and what he did with

General Motors that is relevant.

THE COURT: You are not making any senst to me at all.

MR. PERSON: I can't understand how, if he is an intermediate between Nabcor and General Motors, you are saying just ask what he did with General Motors. Well, what he did about Nabcor is also the context in which his actions with GM took place.

THE COURT: Yes, fine, but this document is strictly hearsay, as far as General Motors is concerned, as far as any defendant in this action is concerned. I grant you it is a minute of a meeting, but General Motors wasn't there, no defendant in this action was there, no defendant in this action as far as I know was a member of this thing, and what you have at the end is a reference, "At the conclusion of Mr. Mirenda's remarks Mr. Malice brought to the attention of the board the activities og the United Buying Service and the United Auto Brokers and indicated he considered this a serious problem."

I don't even know -- then, "This subject was brought up at the Chrysler Dealer Council meeting and Chrysler stated they had no leasing agreement with Nabcor."

I've got this thing out of order, I'm sorry.

"The matter of Nabcor" -- let me go back. There is a paragraph 3 on page 2.

"The matter of Nabcor, Inc. has been referred to NADA for action with the factories. This subject was brought up at the Chrysler Dealer Council meeting and Chrysler stated they had no leasing agreement with Nabcor. We have secured additional information on the principals from other chartered corporations and this information has been passed on to NADA."

Now, what's NADA?

MR. PERSON: The National Automobile Dealer's Association.

THE COURT: Just a minute. Let me think a second.

Well, look, Mr. Kaplan, let's suppose that at a meeting where this man was present there was some discussion of doing something with the manufacturers about Nabcor and let us suppose then he has discussions with people at General

Motors. He is the witness and it does seem to me that on the issue of credibility, you see, he may end up denying that he had any discussions with General Motors and it seems to me that what Mr. Person is doing is doing something that from a common sense standpoint, just from a standpoint of factual approach makes sense, that he is showing the background in order to try to prevent this witness from wriggling out when he gets to the actual conversation.

I mean I'm putting it in very hurried terms but that was what anybody would be concerned about if they were in Mr. Person's shoes, and I think that the jury will simply have to understand -- I think I'm going to allow it, and the jury will have to understand that if there is no actual connection -- in other words, these dealers can talk all they want about doing something with the factory, and that in itself doesn't prove it. But it is just background. I don't know, I think he has to do that.

MR. KAPLAN: Your Honor, I must respectfully disagree. I understand what you are saying. I think the critical problem is this:

If there was some evidence that these minutes si said that this witness was delegated to call the factory, or even conceivably that these people had decided that they were going to call General Motors, it might conceivably be relevant. But there is another link in the chain, and the other link in the chain is that the minutes say that the matter of Nabcor was referred to the NADA.

THE COURT: The jury can hear that.

MR. KAPLAN: Your Honor, of course I bow to your ruling but I disagree with it respectfully.

THE COURT: Okay.

(In open court.)

THE COURT: Ladies and gentlemen, I'm overruling the objection to these minutes. You'll hear, I'm sure, excerpts from the minutes shortly.

They refer in very summary fashion to some remark or remarks about Nabcor. I want to caution you I'm receiving this document for one reason and one reason only, and I want to caution you there is no indication that General Motors was present at the meeting. It's apparent that General Motors was not. No representative of General Motors was present at this meeting. There is no contention that there was such a representative there.

Furthermore, no defendant in this case that is being tried before you was there. None of the four or five auto dealers that are still defendants in this case was present at the meeting. The association was the Long Island-New York Association. That is not a defendant in this action before you.

So in sum this is a minute of a meeting of an association attended by dealers, none of whom are parties to this right now.

However, simply as part of the narrative of events, I am permitting the minutes in and I'm going to permit testimony about that meeting simply because this witness was there and I feel that his testimony about -- I don't know what his testimony will be, I have no idea, but I think it is unrealistic to simply cut out any transactions or discussions that this witness had about Nabcor.

But you have to keep in mind always that what this witness or what other people said outside of General Motors' presence, outside the presence of any defendant in this action, does not bind or affect any defendant in this action, including General Motors, until and unless there is some connection. People can talk about General Motors or about factors in General Motors' absence but that doesn't make General Motors liable. It has to be connected up to something that General Motors does.

What is the date of the minutes?

MR. PERSON: December 14, 1966.

THE COURT: Proceed.

BY MR. PERSON:

Q Do you remember any of the members of

the Automobile Dealers Association back in 1966? You were a member?

A Yes.

Q Was Cadillac a member?

A Cadillac? I don't know what you mean by that.

Q Are you familiar with any Cadillac agency or other place where new Cadillacs were sold in Manhattan in 1966?

A I recall in 1966 Cadillac was represented in the Borough of Manhattan by a factory store, and no factory store was ever a member of our association.

Q They were not invited?

A We have no restriction on membership but my comment would be that basically I would assume that General Motors or any factory store would have to be an idiot, where somebody would think they were in collusion with the dealers.

Q You don't know of any collusion?

A I have been a dealer since 1957 and I still have not experienced any.

Q How many automobile brokers did you have as members of your Automobile Dealers Association?

A Would you define an automobile broker for me. This is an open organization.

THE COURT: Don't go around from that. There is no use arguing with him. He said it was open. He was not trying to indicate that it was open -- let's not argue in that way.

Q It was not open to automobile brokers, was it?

A I can't recall the by-laws. We didn't have too much in the way of restriction.

Q But not a broker.?

A Until you define a broker for me I can't answer your question.

Q Was United Auto Brokers a member?

A No.

Q Was National Auto Brokers, or Nabcor, a member?

A They were not a member.

Q Was DABS a member?

A I don't know who they are.

Q Was United Buying Service a member?

A No, they were not.

Q Are all those automobile brokers?

A In the trade, yes.

Q Do you know any others like that? Can you think of any other companies, back in '66, '67, similar to that?

A I don't know whether they applied for membership either.

THE COURT: I didn't know Nabcor was suing because it was not admitted to membership in this association.

Let's go to something else.

Q Take a look at the minutes. Do you recall having attended the meeting referred to in those minutes?

A My name is listed as being present.

Q Do you know a person named Mr. Ordman?

A Howard Ordman? He's the attorney for the Dealer Association.

Q He was also representing you in this action?

A He?

Q Yes, sir.

A No, sir. You mean when I was a defendant in this action?

Q Right.

A I told you he's not with Webster, Sheffield.

Q These are minutes dated December 14, 1966. This is Exhibit 627. It's a board of directors meeting, Wednesday, December 14 1966. The regular quarterly meeting of board of directors of the Association was held at the Internal Motel or Hotel, John F. Kennedy International Airport, on Wednesday, December 14, 1966. President Frank Mirenda opened the meeting with the following directors present -- Mr. Dillon is named and various other people are named, and counsel H. Ordman and Peter A. Gordon.

I jump to the second page of these minutes. In the middle of the page, paragraph 3:

"The matter of Nabcor, Inc. has been referred to NADA for action with the factories."

I might say to you that the NADA is the National Automobile Dealers Association.

"This subject was brought up at the Chrysler Dealer Council meeting and Chrysler stt stated that they had no leasing agreement with Nabcor. We have secured additional information on the principals and other chartered corporations and this information has been passed on to NADA."

At the bottom:

"At the conclusion of Mr. Mirenda's remarks, Mr. Malice brought to the attention of the board the activities of the United Buying Service and the United Auto Brokers and indicated that he considered this a serious problem."

Do you know what a wholesale order is?

A Yes.

Q What is it?

A The sequence of events?

Q Just answer the question.

A We get an order from a customer where he orders a specific automobile. We in turn take a form that's provided by the factory and we fill it out and send it to the factory, and that activates the building of that automobile for a specific customer.

Q What does the term "wholesale" refer to?

A Wholesale refers, in my opinion, to

the fact that we buy that car from the factory wholesale and sell it retail.

Q Do you ever sell any cars at wholesale yourself?

A What do you mean by wholesale? Do we ever sell a car to somebody at exactly what we pay the factory for it?

Q With a slight mark-up.

MR. KAPLAN: I object to that.

THE COURT: Sustained.

Q What do you call the order? Do you submit orders to the factory for sales that you call fleet sales?

A Yes. We don't differentiate. They are sales as far as we are concerned.

Q What is that kind of order called when you submit it to the factory?

A It's a wholesale order. It's the same whether for a fleet customer or retail customer.

Q So any order by you to the factory is a wholesale order?

A Yes.

Q What's a stock order?

A A stock order would be automobiles that we as a dealership order to put into our inventory so they would be available for customers to buy out of our inventory or off the floor when they come into the dealership.

Q Is there any place on your form for the inclusion or the designation of the order as a stock order?

A If I recall, there are two classifications or three classifications on there. There is stock, retail -- sometimes they have demo on there, and sometimes they have fleet.

MR. PERSON: I offer in evidence Exhibit 628.

MR. KAPLAN: No objection.

THE COURT: It will be received.

(Plaintiffs' Exhibit 629 was received in evidence.)

xx Q I show you this. Were you referring to the top left of the form where it says "Stock sold"?

A There are deisgnations there. There are three designations up there.

THE COURT: What is it?

THE WITNESS: This is what Mr. Person

refers to as a wholesale order. This is what we as a dealership send to the factory and from this they key punch an automobile and build an automobile based on the information we designate on here as to color, trim, equipment, etc.

Q There are three ways you can order that car from the factory?

A Sold, stock or fleet.

Q What is stock, once again?

A That's an automobile that we order for the dealership to put in our stock so that it is on the premises available for sale to a customer.

Q Does that mean that you have no customer for the car at that time that you are ordering the car?

A Correct. It's an inventory item.

Q Are there any instructions which you follow in filling out that form? Are there any instructions from General Motors with respect to your completion of the GM wholesale order form?

THE COURT: I would appreciate an objection on relevance. There are points that we have to worry about in this litigation. If General Motors has a book of instructions about filling out a form, in other words, saying what should go in certain blanks and what code numbers to use and whether to type it or print it, that is of no concern to me or anybody else in this courtroom unless we have to go and order a car as an auto dealer, and I don't intend to very soon.

MR. PERSON: If he disregarded instructions that might be relevant.

THE COURT: Suppose he filled it out in pencil instead of ink. Does it make any difference?

Q Do you know of any instructions concerning how the stock, fleet and sold forms should be filled out on the order form?

THE COURT: Objection sustained. There was not one but I'll sustain it.

Q What does the "sold" refer to? What type of order is that?

A I have told you.

THE COURT: Objection sustained. Let's move on.

Q And the "fleet"?

A The fleet is for a fleet customer.

Q What type of fleet customer?

A Anything that we consider to be a fleet customer.

Q That's what you as Ruckle Pontiac consider to be a fleet customer?

A Yes.

Q Are you aware of anything called a fleet certificate?

A Yes. I told you. I have one in my leasing company.

Q Does that have anything to do at all with whether you checked the "fleet" part of the order form?

MR. KAPLAN: That's a little vague.

THE COURT: I think that's all right.

A I am not involved in the day-to-day operations of my fleet department, but if I were ordering a car I could not care less as to whether a guy had a fleet certificate or not and I know GM does not. If I check "fleet" it goes through as fleet.

Q Have you ever checked "fleet"?

A Yes.

Q Have you ever checked "fleet" for Nabcor?

A I've never ordered a car for Nabcor.

Q Did you, Ruckle Pontiac?

A I don't know. I have not seen the papers on it.

MR. KAPLAN: Your Honor, could we see you at the side bar. There may be a way of short-cutting this.

(At the side bar.)

MR. KAPLAN: Ruckle produced its files on all the cars it sold to Nabcor. This is a tabulation of everything in the files that's relevant. Almost all of these car order forms were marked "fleet." What Mr. Person is driving at, if the man marked them "fleet," let's use it and get it over with.

THE COURT: What do you have him here for?

MR. PERSON: To explain why Ruckle Pontiac, which was dealing --

THE COURT: Let's get to it. We are going all around. We are beating around the bush. Let's get to it.

Let's find out what he did, what knowledge he has of the transaction with Nabcor, Q What else?

A The documents that you asked for describing Ruckle Pontiac's relationship with Nabcor, I believe that you probably have copies of them from when we were a defendant, and they are filed, as I understand it, with our attorney and were not available on such short notice.

THE COURT: Let me go back a moment, Mr. Dillon. We have been on the trial of this action for several days and the word "fleet" has been mentioned frequently.

When you put down the designation "fleet" in connection with a car that was ordered from General Motors, why did you do that? What is the point of doing that? What does it mean? What are the results?

THE WITNESS: They have two types of allocation. They call it a retail allocation and a fleet allocation. A car --

THE COURT: When you say "they" --

THE WITNESS: General Motors or all your manufacturers.

THE COURT: Neither the jury nor I understand any of these terms particularly.

THE WITNESS: I will go back.

THE COURT: What do you mean by "allocation"?

THE WITNESS: For instance, the New York area in Pontiac might be receiving a thousand cars and they wack them up among one hundred dealers, which means that each dealer would get 10 cars. In addition to that, they would allocate automobiles for fleet purposes. They might allocate another one thousand. That would mean that I would be able to get, if I so desired, 10 retail cars and 10 fleet cars.

THE COURT: Let me see if I understand you:

Is it correct that at least on some models of cars there is sometimes something of a shortage?

THE WITNESS: Correct. That only would come into effect if you had a model that was in short supply. In most cases it is academic.

THE COURT: But you have this concept of allocation which comes into effect if a model is in short supply, correct?

THE WITNESS: Yes.

THE COURT: According to the practice, as you see it, how does General Motors do the allocating? Do they start on an area basis?

THE WITNESS: I have no knowledge of how they allocate, truthfully. It is, at best, an imperfect science. We have either too many cars or too little.

THE COURT: I want to get back to what you said. You said that they would start by allocating on an area basis; is that right?

THE WITNESS: Yes.

THE COURT: And then, would General Motors then decide what dealers would get what cars within that area?

THE WITNESS: Yes. They would have a formula. It is not an arbitrary decision.

THE COURT: One kind is a fleet allocation?

THE WITNESS: Yes.

THE COURT: Is there a name for the other kind of allocation?

THE WITNESS: Retail allocation.

THE COURT: Then if you put down "fleet" on your order, that's a way to avoid having it come out of your retail allocation?

THE WITNESS: Correct.

THE COURT: Does it do anything else? Is there any discount or anything like that involved?

THE WITNESS: The price of the car is exactly the same.

THE COURT: You may proceed.

BY MR. PERSON:

Q Are you aware of fleet rebates?

A Yes.

Q What is that?

MR. KAPLAN: Your Honor, I don't want to interrupt, but that was all stipulated. Can't we move along?

MR. PERSON: The witness has testified as to something we have contrary information on.

THE COURT: Overruled.

Q What is a fleet rebate?

A Those are usually given by an automobile manufacturer that has an automobile that doesn't stand up too well in the used car market, so he gives you a rebate to bring his car up to the average of the competition.

Q Did Pontiac ever give fleet rebates?

A I don't recall, truthfully.

Q Do you know whether there was any limitation on the number of fleet automobiles that you could order from the factory?

A I never had any restrictions placed on our dealership.

Q You could order as many cars on a fleet basis as you wanted?

A Yes.

MR. KAPLAN: I object to that "fleet basis" again. There are so many fleet terms --

THE COURT: Let's be precise.

Q There was no limitation, as far as you know, on the number of cars you could receive from the factory when you ordered them using that wholesale order form and you checked off "fleet"; is that correct?

A I never experienced any restrictions.

Q Am I correct in what I say?

A I am telling you, I never had any restrictions. I never experienced any.

Q There was a limitation on the number of cars that you could order in a given period of time if you checked the retail box?

A I, again, never experienced any difficulty with respect to ordering retail cars.

Q Was there an allotment each period that you were given by the factory, a retail allotment?

A We sold enough cars, so they didn't bother us.

Q By that, are you saying you sold fewer than the allotment?

A You are taking an "allotment" like somebody comes home and puts you on an allowance. An allotment, as I say, it is at best an imperfect science. It is based on your rate of travel, your ability to finance the cars, and your ability to sell them.

Q These are events --

THE COURT: Let him finish.

A (Continuing) You are selling automobiles, you get them.

Q In other words, there is no --

A I am saying that Ruckle Pontiac per se never experienced any difficulty in obtaining either fleet or retail automobiles.

Q Did you ever receive any information from the factory as to what the factory called a retail allotment for the month or for another period?

A The only time I ever received anything like that was the build-out which was at the end of the year when they knew how many models they were going to build before they shut the plant down.. They say, "We are going to build 200 more and you can have your share of it," and that's the only time I ever had a discussion with regard to a limitation.

MR. PERSON: I have a list of the purchases that Nabcor made from Ruckle Pontiac which I have compiled from documents that Ruckle Pontiac supplied to us through discovery in this action. Mr. Kaplan also has a list.

THE COURT: Are you offering that?

MR. PERSON: I am.

THE COURT: Do you have copies for the jury?

MR. KAPLAN: May I examine that before it is distributed, your Honor?

THE COURT: Yes.

(Pause.)

MR. KAPLAN: There are obviously quite a few things on this analysis that didn't come out of Ruckle's records. There are Nabcor's internal bookkeeping matters as to who its broker was and who its customer was.

THE COURT: I thought we had an exhibit that was just limited.

MR. PERSON: I was not thinking of the added material. I drew from Nabcor materials to tie up Nabcor's side of it.

MR. KAPLAN: Let us take a look at it.

(Pause.)

THE COURT: Why not use the one that relates to Ruckle's records and then we can check on the additional material and use the other one later?

MR. PERSON: Let me proceed with this exhibit subject to any corrections.

THE COURT: Of course. What is the designation?

MR. PERSON: This is Defendants' Exhibit B-7, I believe.

MR. KAPLAN: We have no objection.

THE COURT: B-7 will be received subject to any corrections made by Mr. Person.

xx (Defendants' Exhibit B-7 received in evidence.)

(The aforementioned exhibit was distributed to the jury.)

BY MR. PERSON:

Q I would like to show you this exhibit, Defendants' Exhibit B-7. Can you look under the fourth column where you see: "Sold, stock, or fleet."

Are you familiar with the transactions involving Nabcor? You said you were not --

THE WITNESS: May I make a statement, your Honor?

THE COURT: Answer his question.

THE WITNESS: I am trying to save the Court a little bit of time.

THE COURT: The question was: Are you familiar with Ruckle's transactions with Nabcor?

A I have to say no.

2 Q That sort of limits me to my questioning here.

Can you see in the fourth column where the indication on your own factory orders as compiled by Mr. Kaplan and myself by using Mr. Kaplan's form indicates that the order to the factory was "fleet." Did you ever have any discussion with anyone concerning the way in which automobiles for Nabcor were to be ordered from the factory?

A With anyone?

Q Mr. Grimm or Mr. Stewart. Let's take them.

MR. KAPLAN: I will object to the internal chit-chat at Ruckle Pontiac. If he wants to ask him about General Motors --

THE COURT: The question is, did he have any discussion? That's not objectionable.

Answer yes or no.

A No.

Q Did you have any discussions concerning any orders by Nabcor?

A Did I?

Q With Mr. Grimm or Mr. Stewart.

A At any point in time?

Q Yes.

A When I found out what Nabcor was I had a discussion with Mr. Stewart.

Q Can you recall the date?

A No.

Q What did you find out that Nabcor was?

A I found out that Nabcor was selling franchises for $5000, which I considered -- to gas stations -- I considered that to be a rip-off, and I wanted no part of it, and I told Mr. Stewart so, and I didn't want to deliver any automobiles to them.

Q You don't recall when this occurred?

A No.

Q Were you still active with the Automobile Dealers Association?

A I stated before I have been active with the

Automobile Dealers Association since 1955 until today.

I can say that it was prior to our meeting. I know that.

THE COURT: Prior to what meeting?

THE WITNESS: The one you were reading the minutes about before.

THE COURT: In other words, this incident where you told Stewart what you told him?

THE WITNESS: It was prior to that meeting.

Q Prior to December 14, 1966?

A I cannot give you the date, but I know it was prior to that.

THE COURT: The date of the meeting is December 14, 1966.

Q December 14, 1966. The date of the Ruckle order from General Motors went through January 31, 1967. Does that help to refresh your memory at all?

A All I can say is if everybody in my organization did everything the minute I told them to do it, it would be a very efficient operation.

Q It is a month and a half. That order still went in to the factory.

A Traditionally we happen to have Christmas and New Year's, which takes about three weeks out of the normal business situation. If you are talking six weeks eliminate three. We are talking about three weeks. If I can effectuate an order in that period of time in my organization I consider that to be pretty efficient.

Q This was six?

A Eliminate three because of the holidays.

MR. PERSON: Here is an analysis of Narcor's orders, Exhibit 630.

This, your Honor, takes in the nine orders and breaks them down chronologically. These are the nine orders that were returned to Narcor.

MR.KAPLAN: I assume it is accurate. I have no objection to it.

THE COURT: If there is no objection, it will be received.

xx (Plaintiffs' Exhibit 630 received in evidence.)

Q The orders that are listed on Exhibit 630 are dated February 3, 1967, through February 28, 1967. This is quite some time after the meeting. Do you recall any of these orders being received?

A Counsellor, I am not involved in the day-to-day operation of my fleet department or any other department in the business. As far as knowing when they got there or when they were sent, I have no knowledge of it.

Q You do recall having said something in December of 1966?

A I remember that.

Q And that was before the meeting, right, that was held in December?

A The reason I can say it was before the meeting, if I was at that meeting Narcor was mentioned. The reason I specifically recall about it is that I knew nothing about Nabcor until I asked Mr. Stewart who Nabcor was, and he explained their modus operandi. I knew nothing about them prior to his explaining them to me.

5a

Q Did you ever, through Mr. Stewart, make an offer to Nabcor to purchase 50 per cent or two-thirds of its business?

A I have to be an idiot to do that.

Q You don't recall that?

A Why would I want to buy a thing like that for?

Q Did you ever go into the business of acting as an automobile broker for doctors, yourself?

A Yes.

Q Where -- when was that?

A That was in '66 or '67.

Q That was after you heard of Nabcor, wasn't it?

A No.

Q It was before?

A I don't remember the exact date.

Q And what did you do? What kind of business was it?

A We handled -- we sold automobiles to physicians through an association they had, when these fellows first became interns.

Q On a fleet basis?

MR. KAPLAN: Objection.

Q How did you buy the cars?

A Bought them from the factory.

Q Direct, only Pontiacs?

A I am a dealer. I wouldn't buy it througn another dealer.

Q Only Pontiacs?

A No, I think we handled some other automobiles, too.

Q Any make or model?

A Any make or model automobile is available to anybody who wants to buy it.

Q You were doing the same thing as Nabcor, weren't you?

A No, I wasn't.

Q How did it differ?

A Because I wasn't charging somebody $5000 for a franchise.

Q What happened to your business then, what happened to it?

A We terminated the business.

Q How? What happened?

A I don't recall how it terminated.

Q You don't recall how you went out of business doing the same thing as Nabcor did?

A Are you stating that we were selling franchises?

Q No, you were selling cars of any make or model, werent you?

A Yes.

Q And you went out of business; why?

A I recall the reason. I think we --

Q Tell us.

A We had some kind of a disagreement with the fellow who was the head of the association of physicians or something or other, and wewent down to see him, Earl Stewart and I, and this gentleman and I got involved in something to the extent that he made a very insulting remark and that ended our business.

Q So, in other words, you did not want to deal with Nabcor because they were selling a franchise, and not because they were reselling cars?

A Yes. I was annoyed. I wish I thought of the idea. I have been paying these gas stations $50 to sell cars. These guys are smarter than I am. They come up and get $5000 from the guy for the same thing I have been doing for years.

Q You never talked to Mr. Stewart about purchasing possibly an interest in Nabcor?

A Never. Whoever came up with that, Jesus!

Q But you went into the business yourself?

A Nothing wrong with going in the business of brokering automobiles.

Q I am not saying that.

A There is something wrong with going in the business of franchisers that you can't produce under.

Q We have an exhibit here, 470, dated March 20, 1967, and it is an envelope from Ruckle Pontiac to Nabcor, March 20, 1967. When was the date that you told Mr. Stewart not to deal with Nabcor?

A I told you I don't remember.

Q November, maybe?

A I don't remember.

Q How far before the meeting in December, 1966?

A I have no idea.

Q No idea. Not important to you. But in March, 19 --

A Counsel, I want to know who can remember dates without a diary 10 years ago.

Q You seem to remember certain things pretty well.

A I remember it specifically because you brought in that meeting, and I know that my first knowledge of Nabcor and what they did was heard from Mr. Stewart, when I asked him what Nabcor was. That's why I remember that time and date. And if they mention it there on that, then I found out about Nabcor prior to that meeting, because I found out from Earl Stewart what Nabcor was and what they were doing.

Q And March 20, 1967, you recall any conversation on or about that date with Walter Grimm concerning the Nabco orders that had piled up at Ruckle Pontiac?

A I don't recall any conversation.

Q Don't recall. Let me show you Exhibits 470 and 471.

Is that Walter Grimm's handwriting?

A I am not qualified to say.

Q You don't know?

A No. I never had that much contact to see his handwriting.

Q Did you ever talk to anyone at the factory about Nabcor?

A Yes, I did.

Q At your home?

A Yes, I did.

Q Who was it you talked with, Mr. Kelsworth?

A No.

Q Who?

A Mr. John McNamara.

Q What did you talk about?

A You want the whole story?

Q Yes.

A Okay.

Q First of all, let me interrupt you and ask when it was.

A Again, I don't remember.

Q Before or after you went into the business yourself?

MR. KAPLAN: I object to that, your Honor.

Q Into the brokerage business, before or after you went into it?

A Since you know when I went into the brokerage business better --

THE COURT: Just a minute. Now, I have let this go, but both of you are interrupting each other, and it is not at all clear to me what the nature of the -usiness was with regard to the doctors.

I don't know what is coming from Mr. Person's mouth versus coming from the witness's mouth, and Mr.

Person is not the witness. So if you would both let each other finish, I would like to go back and clear up something that I don't understand.

Mr. Dillon, the business with the doctors, what was it, when was it, can you briefly tell us, because it may be on the record, but I am not at all sure it is.

THE WITNESS: The brokerage business that Mr. Person --

THE COURT: No, no, just forget Mr. Person now.

Did you go into some business vis-a-vis selling cars to doctors?

THE WITNESS: We sold cars to doctors.

THE COURT: You mean Ruckle?

THE WITNESS: Ruckle. We didn't go into a business. We sold cars to doctors.

THE COURT: All right. Did this take any special form? Just describe it.

THE WITNESS: Mr. Stewart made a contact with the executive vice-president or the head of a doctors' association and we were able to expedite the delivery of automobiles. It was interns, right after they got out of school, and we had set up a national program of selling these doctors cars and having them delivered in various and sundry parts of the country, to them.

THE COURT: All right. When you say "we," of course, you mean Ruckle.

THE WITNESS: Ruckle, yes.

2 THE COURT: Was Ruckle acting as a broker or was Ruckle acting as a dealer? Was the concept of brokerage there at all?

THE WITNESS: The cars that we sold, that we were a franchise dealer for, namely, Pontiac, at that point we were acting as a dealer and we could deliver those as a dealer on what was said before, a drop-shipment basis.

If a dealer will accept a car from us, we can deliver it at any Pontiac dealer in the United States.

On the cars that were not Pontiacs, we purchased them from a franchise dealer and had them make the arrangements to deliver the car wherever it had to be delivered, either on a drop-shipment basis or on a local basis.

THE COURT: All right. Now,where you dealt with non-Pontiacs, did you consider that you were acting as a broker?

THE WITNESS: Yes.

THE COURT: What form of compensation would you take? Was it a fee or how did you consider it?

THE WITNESS: The difference between what we bought the car for and what we sold it to the doctor for.

THE COURT: I am talking about the non-Pontiacs.

THE WITNESS: I am talking about non-Pontiacs.

THE COURT: I see. Earlier you said that you would buy from the dealers.

THE WITNESS: I don't recall how we worked this thing out. Either we got a fee from the dealership or else we would buy the car and in turn resell the automobile. I don't know, don't remember the modus operandi on all the deals.

THE COURT: When was this business in existence?

THE WITNESS: I don't recall. I think it was '67, '68. Mr. Stewart can tell you that much better than I can, and you subpoenaed him, so he can give you the dates on it.

THE COURT: All right. Now, you go ahead.

I think you were asking him about a conversation with Mr. McNamara.

MR. PERSON: Yes. Just one other thing before that.

Q Did you have a fleet certificate before this operation?

A I have a company, a leasing company called Ruckle Auto Rentals which has a general motor fleet certificate.

Q Did you ever use it to buy cars?

MR. KAPLAN: Object to the form. I don't know what that means.

THE COURT: Overruled.

A I will answer it. Yes, I buy cars under it for what it is worth.

Q Right. Did the dealers ever ask you for your fleet number?

A The only one who asked me for my fleet number was a Cadillac dealer.

Q Was that a franchisee of Cadillac?

A Yes, it was.

Q Were you in the National Account List, by any chance?

THE COURT: I'm sorry?

Q Exhibit 626.

A I have never looked to see if I am in it or not, truthfully.

Q Do you know what this is National Account List is? What was the name of the company, by the way? Is it Ruckle Pontiac?

A Ruckle Auto Rentals.

Q Were you in business in '70?

A We were in business in 1957.

Q Ruckle Auto Rentals, Inc., 272 South Broadway, Yonkers, New York.

A Correct.

Q In the 1970 list, page 190.

And did you feel that a fleet certificate assisted you in getting cars at any time?

MR. KAPLAN: Objection.

THE COURT: Overruled.

A It let me get Cadillacs at a time when they were difficult to get, yes.

Q Anyone else, any other kind of car?

A Never had to use it for anything else.

Q Let's go to your conversation, please. Who was it again that you spoke with?

A John McNamara.

Q About when did this conversation take place?

A I would say it was probably some time around November of '66, if I recall.

Q It was at your place, your own home?

A Correct.

Q And you told Mr. Stewart about the conversation?

A No, I didn't.

Q Okay. Go ahead.

THE COURT: Was that on the phone?

THE WITNESS: No, it was personal. He and I were not only business but we were close personal friends.

Q And what was his title?

A I don't know what his position was then. He might have been assistant zone manager. I don't recall what his position was.

Q Of the New York Pontiac zone?

A Yes. He was with the New York zone or involved with Pontiac. I met him in 1955 before I became a dealer, when I was a sales manager at Ruckle, and I knew him until he left to go to Washington, and he had various and sundry jobs. I don't know, at 1966, what his position was.

Q How did you happen to meet with him?

A It was social. I think he was up for Tanksgiving or dinner or something like that. It was a social event, just personal.

Q Describe the conversation, please.

A He asked me if I ever heard of an outfit called Nabcor and I said, "No. Why? What makes you ask?"

He says, "We down in Pennsylvania and," he says, "my jerky brother-in-law is thinking of buying a franchise to sell automobiles," and he says, "Some outfit by the name of Nabcor is selling it. They want $5000."

I says, "I don't know anything about it, but," I said, "maybe I can find out."

And then that's when I went, I think it was the next day I went and I asked Earl Stewart, "Did you ever hear of an outfit called Nabcor?"

He said, "Sure, we are selling them cars."

And I said, "What's the story?"

Q You didn't tell Mr. Stewart at that time that you had been speaking with Mr. McNamara?

A No.

Q No reference at all to what you learned?

A No.

Q Wasn't it a weekend that this conversation occurred?

A Yes.

Q A weekend?

A I think it might have been like Thanksgiving weekend or something like that. I relate it to that because he might have been down visiting his family at Thanksgiving or something like that.

Q You and I haven't spoken before, have we?

A No.

THE COURT: Can we have the reporter read back the answer so far before Mr. Person -- just the answer so far that Mr. Dillon gave about his talk with Mr. McNamara; read that whole thing, Mr. Reporter.

(Answer read.)

THE COURT: Finish your conversation

with Stewart.

A And at that point Mr. Stewart explained to me, I don't know whether it was in toto at that time, but explained to me the concept of Nabcor, and I don't know whether it was immediately then or a couple of days later, I told him to stop selling automobiles to them, I didn't want to be part of any kind of a franchise rip-off.

Q Is that all the information you had about Nabcor when you reached that conclusion?

A Mr. Stewart is one of the top fleet men in the country and any information I get from him I will make a sound decision based on that.

Q Mr. Stewart called it a ri-off, did he?

A No, it was mine.

Q Did he call it a rip-off?

A He explained it to me.

Q As a rip-off or not?

A No, he explained the modus operandi of it.

Q Did he discuss the possibility of putting money into it?

A No.

A No.

Q He did not. Did you give him any instructions on how to take care of the Nabcor problem to you?

A No.

Q Did you ask him if there were any orders coming in? You didn't ask him if there were any orders on hand?

A No.

Q You weren't interested in whether you were doing business still with Nabcor?

A No.

Q Not at all?

A Not at all.

Q What did Mr. Stewart tell you, that he had previously done business with Nabcor?

A He said to me that "We're selling them automobiles." And I don't recall, he didn't get involved, I didn't ask him how long or how many or anything else.

Q Do you recall any other incident concerning a Nabcor franchisee by the name of Turco, Nabcor of East New York?

A Yes.

Q What was that incident?

A A gentleman from the Bank of Commerce in Yonkers, who was the vice president and head of the branch --

Q I'm sorry. Before that, in 1967, not the Chamber of Commerce. We will go into that later.

Were you referring to the Chamber of Commerce situation?

A No, I'm not referring to the Chamber of Commerce.

THE COURT: Start again. What was that?

Q In 1967 do you recall any incident involving sales by one or more Nabcor franchisees to persons in the Yonkers area, sales of Pontiacs?

A A discussion with anybody?

Q Well, with Mr. Stewart possibly.

THE COURT: Are you asking about the Turco things?

MR. PERSON: There are two Turco events, your Honor.

THE COURT: Let's get the witness' testimony and let him tell us.

A Mr. Stewart at some point in time, I don't know exactly when, when I said I didn't want to sell them automobiles any more, he came to me and said Nabcor would give me a letter that they would not sell any cars or give any franchises to anybody in Yonkers if I would continue to sell them Pontiacs, and I said, "I'm not interested."

THE COURT: Would you repeat that, Mr. Reporter.

Just speak a little slower, please, Mr. Dillon.

(Answer read.)

THE COURT: I think we had better take our recess.

(Recess.)

THE COURT: All right, go ahead, Mr. Person.

BY MR. PERSON:

Q Can you recall, Mr. Dillon, approximately how long it was between the time that you had this incident that you have just described before and your meeting with the Automobile Dealers Association?

A He has described several incidents.

Q The December 14th meeting with the Automobile Dealers Association, and the time that Mr. Stewart was going to -- there was some incident --

A No, I would say I don't know.

THE COURT: Look, please, I don't think it is clear even what incident.

Now, he has mentioned the incident which took maybe two or three conversations when McNamara mentioned Nabcor, and you went to Stewart, and then a day or so later said, "Don't accept any more orders," and then he said that there was a later incident at some point where Stewart came back and said that Nabcor would give a letter and so forth. As far as I can see there are two things you could call "incidents." What are you talking about?

Q The letter incident.

THE COURT: What?

Q The incident involving a letter, that Nabcor would give a letter to Ruckle Pontiac.

A I don't remember.

Q Do you recall approximately the date of that?

A No, no way.

Q Were you aware at that time that Ruckle Pontiac was still selling to Nabcor?

A I would not have checked on it or been cognizant of whether they were or not.

Q But you did have a discussion concerning a letter that would be sent to you by Nabcor, isn't that correct?

A Yes.

Q Did you ever receive such a letter?

A No.

MR. PERSON: I'd like to offer 547 in evidence.

MR. KAPLAN: I certainly have no objection to 547 in evidence.

THE COURT: Is it in already?

MR. KAPLAN: No, I don't believe it is. I don't object to it.

THE COURT: All right.

(Plaintiffs' Exhibit 547 was received in evidence.)

Q Would you please read this exhibit, 547?

THE COURT: Can I see it for just a minute, please?

Okay.

A It's dated March 10, 19 --

THE COURT: Just read it to yourself and he'll ask you a question.

A You asked me to read it.

Q I didn't mean to read it out loud. I'm sorry.

(Pause.)

THE COURT: Okay. What's your question?

Q Do you recall having seen this letter before?

A No.

Q Does it refresh your memory as to any part of your discussions with Mr. Stewart concerning this letter that was going to be written by Nabcor, do you have any additional testimony on that?

A No.

(Mr. Person read from Plaintiffs' Exhibit 547 in evidence.)

Q And you are unaware that there was any dealing between Ruckle and Nabcor immediately prior to that letter, is that correct?

A I don't follow what you mean.

Q At what point did you become aware that Ruckle was still dealing with Nabcor?

MR. KAPLAN: Your Honor, if he did, and when; I just don't think I follow that.

Q When did you first --

THE COURT: Let me hear the question.

(Question read.)

A I don't recall.

THE COURT: I think there was an objection. It assumes that he became aware.

MR. PERSON: He had testified that he had given orders to Mr. Stewart to stop dealing with Nabcor because of the franchises or something like that. And here, months later, Nabcor was still dealing with Ruckle.

THE COURT: I will strike the testimony. It is a confusing question, and it doesn't make sense in view of the record. Ask another question.

MR. KAPLAN: Your Honor, I would also like to object to the characterization of the testimony, because I believe the testimony was that Mr. Dillon told Mr. Stewart he didn't want anything to do with them, and that at some time, and he didn't remember when in relation to that, there was an incident involving sales in the Yonkers area.

THE COURT: We don't have sumrations now.

MR. KAPLAN: I don't mean to do that but Mr. Person made an estimate which I don't think is accurate.

THE COURT: I think it is not a correct characterization of the record. But the jury remembers, I'm sure.

All right.

Q Can you state at what point you first became aware that Nabcor was doing business?

MR. PERSON: I'd like to go back.

THE COURT: All right, fine.

MR. PERSON: Because there is some ambiguity here, I think.

Q Are you able to state approximately what month you first became aware that Nabcor was doing business with Ruckle.

THE COURT: Look, Mr. Person, we have been through this many times. And this is a representation, and I will simply ask this:

You have already testified that you were told by Mr. Stewart that Ruckle was selling cars to Nabcor, right?

THE WITNESS: Yes.

THE COURT: Was that the first time that you learned of that situation?

THE WITNESS: Correct.

THE COURT: Now, you have testified that within a day or so you told Stewart not to sell any more cars to Nabcor, is that what you said?

THE WITNESS: Correct.

THE COURT: Did you at any later point learn whether or not Ruckle was still doing business with Nabcor or whether they were receiving orders or returning orders or any of that? Did you learn any facts of that kind?

THE WITNESS: Yes, subsequent to that it came to my attention, I don't know how, it could have been through my general manager, or something like that, I really don't know, that Mr. Stewart was not following my instructions, that automobiles were still coming in for Nabcor, and we had a second conversation regarding it.

THE COURT: Let me just get that. I want the reporter to read that, please.

(Answer read.)

THE COURT: Go ahead. You want to ask questions about that?

MR. PERSON: Yes.

Q Did you discuss Nabcor with any person other than Earl Stewart in your dealership?

A No.

Q And it wasn't Earl Stewart who came back and told you that he was dealing, is that correct?

A That is right.

Q But it's somebody else that you talked with about Nabcor?

A No.

Q Well, at least when he came in.

A Mr. Stewart could have talked to them about Nabcor.

Q I'd like to show you these exhibits, 472 -- they are exhibits for the nine Nabcor orders, and there are various exhibit numbers, plus two confirmation cards. I'd like to ask if you have ever seen those before.

A No.

Q Nobody brought them to your attention?

A No.

MR. PERSON: These purchase orders are dated in February, 1967.

Q When did you get your fleet certificate for Ruckle Auto Rentals, Inc.?

A I don't know.

THE COURT: Speak up, please.

A I said I don't know.

Q Did you talk with anyone concerning getting this certificate?

A No one.

Analysis of cost per unit -- you would have to have a financial statement to do that and I don't have that statement available.

Q Do you recall the gross --

A '75. If you want me to do it I have a calculator here and I'll be able to do it.

Q Thank you, but it is not necessary.

Do you recall the gross profit per unit for Pontiacs back in 1967?

A No. I can't remember back ten years what we made on an automobile.

Q Do you know now?

A What we make now? We are running 462 per new unit.

Q Is the difference substantial, if you can recall, from 1967?

A I testified that I can't recall what it was.

Q Substantially? Is there a very substantial difference of more than $100 per unit?

A I would assume it's probably $100 more but it costs more to do business today than in '67.

Q Do these profit margins include any

calculations for fleet sales?

A Those are retail sales.

Q Back in '67 were you aware of what prices Ruckle was charging, that is, Ruckle Pontiac, when it sold cars as fleet sales?

A Mr. Stewart is the manager of my fleet depoartment and he ran the department and all I looked at was the bottom line and the number of cars he sold.

Q Do you have any orders with Ruckle Pontiac, to your personnel, not to sell to any resellers of cars?

A No.

Q Do you deal with automobile brokers right now?

A If they want to buy a car we will sell it to anybody.

Q Buy it or act as a broker?

A Do we act as a broker?

Q I'll strike the last question and ask you this:

Are you dealing with United Auto brokers now?

A Mr. Stewart can tell you that.

MR. PERSON: I have no further questions.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Are you familiar with the term "bird dog"?

A Yes, I am.

Q Is it a term used in the automobile industry?

A Yes, it is.

Q What does it mean?

A Bird dog is a person who refers retail customers to us and we in turn pay him a commission for it.

Q Has Ruckle Pontiac used bird dogs?

A We have used bird dogs ever since I have been in the business.

Q Has it paid them a commission for referring customers to Ruckle Pontiac?

A Yes.

Q How much of a commission?

A It ranges anywheres from 25 to $100.

Q When you had your conversation with

Mr. Stewart in which he described the Nabcor operation to you was the Nabcor operation, as he described it to you, similar to the bird dogs which Ruckle Pontiac used in its business?

A Yes, it was.

Q And there was one difference, was there not? Ruckle Pontiac paid the bird dogs for sending in the customers, true?

A Yes.

Q And Nabcor charged the bird dogs $5000 for the privilege, true?

A Correct.

Q And that played a role in your decision to tell Mr. Stewart not to have anything to do with Nabcor?

A That's correct.

Q The document, Defendants' Exhibit B-7, indicates that between March of 1966 and the end of January of 1967 -- I believe the jury still has it -- Ruckle Pontiac sold 27 automobiles to Nabcor. How many new automobiles did Ruckle sell in that year in general terms?

A 1966?

Q Yes, sir.

A Close to 1800 automobiles.

Q You had accounts larger than Nabcor?

A Yes.

Q Did you have accounts that bought in excess of 100 cars a year in that period?

A Yes.

Q And more than that?

A Yes. We have accounts that bought cars as high as a thousand.

Q Did Ruckle Pontiac stop selling cars to Nabcor because Nabcor didn't have a fleet certificate?

A No.

Q Did it ever ask Nabcor for a fleet certificate before it sold the 27 cars on Defendants' Exhibit B-7, as far as you know?

A I don't know what was set up before we started to sell cars to Nabcor. That would be Mr. Stewart's department.

Q Defendants' Exhibit B-7 indicates that a number of the cars ordered for Nabcor by Ruckle from General Motors were marked "fleet" on the wholesale car order form. As far as you are aware, sir, did General Motors ever communicate to Ruckle about whether it was proper or improper for Ruckle to order cars for Nabcor marked "fleet"?

A No. Not to my knowledge.

Q Was anyone from General Motors ever present at any meeting of the Greater New York, Long Island and Westchester Automobile Dealers Association in all of the years you have been connected with it, as far as you can recall?

A No, they have never been at one of our official meetings.

Q Has any General Motors factory store or retail branch, or however you want to term it, ever belonged to that dealer association?

A Not to my knowledge.

Q Did anyone at General Motors ever suggest to Ruckle in any way that it should not sell to Nabcor?

A No. My only conversation was the one and that was a social conversation and not a business conversation.

Q The only conversation you ever had in which the subject of Nabcor came up between you and anyone at General Motors was the conversation with Mr. McNamara?

A Yes.

Q That was the conversation in which he asked you whether you knew what Nabcor was?

A Correct.

Q Did he say anything else at all about Nabcor in that conversation?

A No, he did not.

Q Do you know a man by the name of Walter Gray?

A He has had various jobs in the New York Zone and the most recent one was zone fleet manager.

Q That's for Pontiac?

A Yes.

Q Did you ever discuss Nabcor with Walter Gray?

A No.

Q Mr. Dillon, I would like you to think carefully about this question and answer it as fully as possible.

Was Ruckle Pontiac's decision not to consider selling to Nabcor influenced in any way by anything that General Motors ever did or said to Ruckle Pontiac?

A No, because I never had any conversation with them regarding it.

MR. KAPLAN: I have no further questions.

THE COURT: Any redirect?

$89 REDIRECT EXAMINATION

BY MR. PERSON:

Q Did you go to all the meetings of the Automobile Dealers Association during your time as a director?

A No.

Q So you really don't know whether or not a GM representative was at the meetings you did not attend, isn't that correct?

A I received copies of all of the attendees such as you have on that list and in most cases I would look at it and if someone was on there from General Motors he would have been listed, and I never recall seeing one.

Q You read things that come from the New York ADA?

THE COURT: He has said that.

Q You were talking about selling 1800 automobiles. Was that in 1967?

A 1966.

Q Did that include any number to Ruckle Automobile Rentals?

A Yes.

Q So that how many cars did you sell in Ruckle Auto Rentals?

MR. KAPLAN: I object to that. He said how many cars --

THE COURT: Mr. Kaplan, what's your objection.

MR. KAPLAN: How many cars he sold in Ruckle Rentals rather than to! I have no obection to "to."

THE COURT: Rephrase it and clarify it.

Q How many Pontiacs did Ruckle Auto Rental sell during 1966?

A Auto Rental?

Q How many transactions for Pontiacs did Ruckle Auto Rentals have?

THE COURT: What relevance is that?

A I don't know what you are talking about.

MR. PERSON: He bought them from his own dealership and therefore ir reduces the number of cars he bought as a dealer.

THE COURT: If your question is how many cars did Ruckle Pontiac sell to Ruckle Leasing, that's a question. Do you want to ask that?

MR. PERSON: Yes.

Q I ask you that.

A I have no idea. It is not a substantial number because our total fleet, I don't think, exceeds 180 cars in the leasing company.

MR. PERSON: I have no further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. PERSON: I call Mr. Stewart.

EARL ROBERT STEWART, called as a witness by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PERSON:

Q What is your address, please?

A 41 Todd Lane, Stamford, Connecticut.

Q Are you employed by Ruckle Pontiac?

A Yes, sir.

6B

THE COURT: Look, there are occasionally these terrible general questions which don't relate to the case. I am expecting defense counsel to be alert and object. I will sustain the objection. The limitation could be of any conceivable kind. I sustain the objection.

Q Did you discuss with General Motors anything about the setting up of the fleet department?

A I would have no reason to, no.

Q Did you receive any material from General Motors in connection with the operation of a fleet department?

A Like what?

Q Anything to help you sell.

A General Motors does not have anything to do with a retail dealer's fleet operation. There are no sales guides,as such. They do furnish pertinent information as far as product and accessories on price lists.

THE COURT: All of that is completely irrelevant.

Mr. Kaplan, I have to count on you.

MR. KAPLAN: I am trying not to be a pest.

THE COURT: I have to get this trial on.

I cannot have these general questions.

Q Did you receive the National Account List, Exhibit 626, from General Motors' fleet section?

A When?

Q During June of 1970 or approximately that month.

A Those lists are available to any Pontiac dealer.

THE COURT: Did you receive it?

THE WITNESS: It is possible, your Honor. I don't recall.

Q Have you ever received any National Account List from General Motors?

A I usually get an update on that.

Q From General Motors?

A Yes.

Q Are you familiar with the R.L. Polk Registrations?

A Yes.

Q Does Ruckle Pontiac receive those?

A No.

Q Did it ever?

A I have no knowledge of that. I am referring to the fleet department. What the dealership has received, I have no knowledge of that.

THE COURT: In other words, the fleet department doesn't receive the R.L. Polk list?

A No, sir.

Q Did you have any market in mind as to whom you would attempt to sell cars from your fleet department?

A Yes.

Q Could you define that market, please?

A These would be companies like Rent-A-Car Company, commercial users. Any company that would purchase 20 or more automobiles a year was classified as a fleet account.

Q By General Motors?

A All of the manufacturers.

Q You are following their classification of what constitutes "fleet"?

A You are asking me whom I contacted for sales of automobiles and among other organizations I contacted fleet accounts.

Q A fleet account is defined by GM?

A With the term "fleet," yes.

Q Did you contact any other people?

A Yes.

Q Such as who? Describe them in categories.

A They could be utility companies -- anyone who has an automobile and is a customer.

THE COURT: We are talking about customers or potential customers of your fleet department. There is something I didn't understand.

Is there a concept called "fleet account"?

THE WITNESS: Fleet user.

THE COURT: Did you say that General Motors defines that?

THE WITNESS: Anyone who approaches 20 or more units a year.

THE COURT: Is this definition something that comes from General Motors or something --

THE WITNESS: I don't know. It may be just a term that we use in the trade, in our retail fleet trade.

THE COURT: Is there a guide book or publication or instruction that you can recall where General Motors defines the term "fleet user"?

THE WITNESS: No.

Q Could you go back and try to define the market you had in your opinion back when you started this fleet department for Ruckle Pontiac?

A It was set up to sell automobiles andwe sold cars to whomever we buy.

Q You set up the department?

A Yes.

Q You intended to sell cars to anyone who would buy; is that correct?

A True.

Q Were you in competition with the retail part of Ruckle Pontiac?

A Not intentionally.

Q How did you avoid going into competition with them?

A If we had an agreement with a company which sold their employees automobiles at a particular discount, they were instructed that the only person they could talk to would be me, meaning they could not go to a retail salesman and then come back to me later on and effect a greater discount.

Q Did you check to see whether or not that company had a fleet certificate, the employer in that situation?

A Not particularly.

Q Did you check to see if their name was listed in the National Account List?

A Not particularly.

Q Did you check to see if they had any specific number of cars in their name registered in its name in the R.L. Polk list?

A No.

Q That was of no concern to you then?

A None whatsoever.

Q Was it your function to sell as many cars as you could?

A Yes.

Q Did any of the salesmen from Ruckle ever complain about Nabcor selling in Yonkers or that area?

A I only recall one instance.

Q What was that?

A That had to do with one of their franchisees, a fellow by the name of Turco, I believe his name was.

Q Nabcor of East New York?

A Yes.

Q That's a plaintiff in this action. Nabcor of East New York is a plaintiff in this action.

Go ahead and describe the incident.

A The incident was that one of the salesmen apparently was working on a customer and unknowingly he and Turco were in competition in selling this one car, and Turco had explained that Ruckle Pontiac would service the car, and the salesman was very excited about this.

Q Not happy?

A After he had been spending a considerable amount of time trying to sell a customer a car, this was his job, and he could not have been happy.

Q Did Ruckle have any policy as to Pontiacs that were purchased outside of Ruckle being serviced at Ruckle Pontiac or not?

A Come again?

Q Could cars that could have been bought from any of the Pontiac dealers or independents, could those cars be services at Ruckle Pontiac?

A Sure.

Q There was no order not to service them?

A No. As a matter of fact, we always look for additional service customers.

Q Did you advertise for service customers?

A I didn't. The dealership did.

Q Do you know of any ads that they have placed?

A I would have no knowledge.

Q But you do know of ads to sell cars by Ruckle Pontiac?

A Oh, yes. They always had ads.

THE COURT: I didn't understand fully what this Turco thing was. Maybe some people on the jury didn't. Expand that a little further, if you will.

What occurred? Identify who was involved. Tell us more fully and in more detail what happened.

THE WITNESS: Apparently this gentleman, Mr. Turco, who had a franchise with Nabcor, had a customer that one of our retail salesmen was attempting to sell.

THE COURT: A Ruckle retail salesman?

THE WITNESS: A salesman employed by our company.

THE COURT: Proceed.

THE WITNESS: He got very excited about it and he complained --

THE COURT: Excited about what? Go over that again.

THE WITNESS: He was very unhappy that a franchisee would be able to give him, as a retail salesman working for the same firm, competition in the sale of a car.

THE COURT: Working for the same firm?

THE WITNESS: You see --

I remember meeting Frank Maiorana in the coffee shop at the motel where he had his office.

Q Exhibit 483 is in evidence. It is a letter dated March 22, 1967, from Frank Maiorana to Ruckle Pontiac. Do you recall that letter?

A Yes.

THE COURT: Are you going to let the jury know what this is?

MR. PERSON: Yes, your Honor.

MR. KAPLAN: I have copies for the jury, your Honor.

(The aforementioned exhibit was distributed to the jury.)

(Pause.)

Q Is this date approximately correct, March 22, 1966, the date in which you and Frank Maiorana met?

A Possibly.

Q Does the letter accurately reflect the agreement that you and Frank Maiorana reached?

A Yes.

Q That is, $75 less 1 per cent?

A Yes.

Q Made ready for delivery?

A Yes.

Q Do you know of any fleet rebates at that time that were made available by General Motors to any of its dealers?

A Not that I can recall.

Q So that this thing included no fleet rebate of any kind.

Was that price a price that you had given to any other persons that were buying cars in your department?

MR. KAPLAN: May I question the relevancy of that?

THE COURT: Overruled.

A Ask that again.

Q Is 75 less 1 per cent -- and I gather that means half of the hold back of 2 per cent; is that correct? $75 less 1 per cent means half of the whole back is deducted from the $75?

A It does not refer to that. It could have been 1 per cent of the purchase price, or what have you.

Q Here it says $75 less 1 per cent?

A Yes.

Q So that means that if the car costs $2500 that the price of the car that Nabcor paid would be $50 over your cost? A Approximately. Yes.

T7

Q $75 less 1 per cent?

A Yes.

Q Was that a price that was common, commonly given by Ruckle Pontiac, the fleet department, to its customers?

A Not necessarily.

Q And were prices lower than that?

A It's possible.

Q And do you recall any, for Pontiacs --

A Not particularly.

Q Do you recall the discussion that you and Mr. Maiorana had on or about March 22, 1966, about Nabcor's type of business?

A Well, as I said, I had many conversations. I don't remember one particular conversation, but if you have something that could refresh my memory?

Q Did you talk about what Nabcor intended to do with the automobiles?

A It's possible.

THE COURT: Let's take our morning recess.

Q Let me ask one thing: were you aware that Nabcor resold the automobiles?

A Yes.

THE COURT: All right, 2.15.

(Luncheon recess to 2.15 p.m.)

Q And are you familiar with this wholesale order form that Pontiac has prepared?

A Yes, I am.

Q Exhibit No. 628. I would like to just show you the exhibit.

A Yes, that's the standard.

Q And you are familiar with these three boxes to be considered, the sold, stock and fleet boxes?

A Yes.

Q Did Ruckle Pontiac have any retail allotment for any months during 1966 that you are aware of?

A I wouldn't know anything about the retail. I was exclusively fleet. Had nothing whatsoever to do with the retail operation of the dealership.

Q And every order in your department would be a fleet order?

A Not necessarily.

Q Would it be a retail order? Would a car be a retail order in your department?

THE COURT: You know, "not necessarily" doesn't help very much. What does it mean?

Q When would an order --

THE COURT: No, I am addressing the witness. When you say every order in your department would not necessarily be a fleet order, what does that mean; some would be retail?

THE WITNESS: No, no. You see, as we sold automobiles, your Honor, we ordered them from the factory, and it didn't make any difference what the tag was, whether it was fleet or retail.

Now, if we were --

THE COURT: You are talking about -- well, I have really lost the context. I thought Mr. Person asked you -- we can get the record read back.

Let's go back. Can you find the question I am talking about?

(Record read.)

THE COURT: Now, what were you asking about, every order by a customer to Ruckle's fleet department or every order by Ruckle's fleet department to general Motors, which were you talking about?

MR. PERSON: The latter, your Honor.

THE COURT: All right.

A It could be either/or.

Q So that your fleet department sumitted orders that were either retail or fleet orders to General Motors?

THE COURT: Well, there is no such thing as a retail order to General Motors. He's listed, we have had this before, it's either so stock, fleet or --

THE WITNESS: Sold.

THE COURT: -- sold. So let's rephrase your question.

Q Could your fleet department submit a sold order to the factory.

A All of the orders that we submitted to the factory were sold orders.

Q So that a fleet order automatically means that it's been sold in advance?

A Yes.

THE COURT: I don't understand that at all.

Now we have got -- we had it before through Mr. Dillon, and on the form -- you are familiar with that form?

THE WITNESS: Very much so.

THE COURT: Okay. And is it correct -- I didn't actually read it but I was told -- is it correct it has three designations, and you check on, fleet, sold or stock?

THE WITNESS: Yes.

THE COURT: Okay.

THE WITNESS: The only thing that I could say in deference to that, your Honor, would be the only time that there was any importance of checking --

THE COURT: I'm not worried about importance.

THE WITNESS: Okay.

THE COURT: Your department, I take it, and you personally -- I think you've told us -- filled out the order forms for ordering cars for your fleet department from General Motors, right?

THE WITNESS: Right.

THE COURT: Now, the orders to General Motors that came from your fleet department, did you say that they never bore the fleet designation, you never checked the fleet box?

THE WITNESS: No, sometimes we did; sometimes we didn't. It wasn't mandatory that we did.

THE COURT: And why wasn't it mandatory?

THE WITNESS: In the complexion, if that is the proper choice of words, in ordering automobiles from the manufacturer, reference was made in prior testimony to allocation --

THE COURT: You are going to have to speak up, and I will hear you even though you don't face me. So you face the jury.

THE WITNESS: All right.

In previous testimony about allocation of automobiles, the allocation, as I understand it, in the fleet department was that the manufacturer was capable of building so many automobiles and with the number of sales zones that they had throughout the country, they would allocate 100 per cent of their production capability into these different sales zones.

Now, if one sales zone, for instance, in California, if they were capable of selling 50 per cent of the production, they would make sure that that particular area would get the bulk of the production and the rest of the cars would be built according to the sales in the other zones.

Now, what they used to do was to make so many cars available for the retail business, and then if they had extra cars available, you could get an allocation from the fleet section.

So this was just merely a means of distribution. It really didn't have anything to do with the dealer.

BY MR. PERSON:

Q What do you mean by a number of cars for the retail part of the business? Who defined that part?

A One hundred per cent of the production of the corporation is for sale. Okay? Let's start out at that point.

Q Right.

A Okay, now, the bulk of their production was for retail.

Q Who defines retail? Stop right here for a second. Who defines retail?

A I would presume --

MR. KAPLAN: Excuse me --

MR. PERSON: Let him answer.

MR. KAPLAN: I have an objection to the answer. I think it would be perfectly appropriate first to ask the witness what he meant by it before we get into who defines it.

THE COURT: I think that's clear.

MR. KAPLAN: I'm not sure either, your Honor.

THE COURT: The question is --

THE WITNESS: If I were selling automobiles to an account and they were buying automobiles, we'll say, at the rate -- knowing beforehand that a fleet account was soembody who had purchased 20 or more cars a year, I classified those as a fleet account.

So when I ordered the automobiles I would mark "fleet."

Q And did the factory ever ask you what

the fleet number was?

A No.

Q Or whether it had a fleet certificate?

A I can't recall the last time -- whether they ever did ask that question or not.

Q Did these people have an entry in this book, the National Fleet List.

A That National Fleet List you refer to, that was for the use of dealers such as myself who used this to pick out the names of companies you wanted to sell. We used that as a sales aid. That's all that book was for. That's the only reason we would have that in our possession. That didn't have anything to do -- that was a sales tool to help us find customers. We used to go down that list on everyone local and contact them.

Q This is Exhibit 626, the national account list. Included in this book are names and addresses of all rental, leasing and commercial companies who registered ten or more vehicles during the previous calendar year or who have been included due to ten or more registrations during the current calendar year?

A That shows you how much I have been reading that. I have been saying twenty and it's ten.

MR. PERSON: "We encourage you to identify those accounts which are located in your area and solicit their business on a regular basis. In addition to being an invaluable tool in the growing fleet market, this publication will also be of material assistance in determining those companies which are qualified under the provisions of the 1970 General Motors fleet plan. Other companies not included in this book may be or become qualified under the plan. If assistance is needed in determining whether a company not included in this book qualifies under the plan, please contact your zone office."

Q Did you ever contact any zone office concerning the company?

A No.

Q Do you know Mr. Walter Gray?

A I do.

Q Did you ever talk to him concerning Nabcor?

A Yes.

Q What did you talk about?

A At the particular time I talked with Mr. Walter Gray Mr. Maiofana wanted me to initiate a contact with the fleet department of Pontiac to secure a fleet certificate number for him.

Q Did you discuss with Mr. Maiorana why he wanted it?

A Did I discuss it with him?

Q Right.

A I would have no reason to discuss it with him. He was the one that wanted it.

Q Did you ask him why?

A Not particularly.

Q Did he tell you why?

A I don't recall. He may have.

Q Do you think you told Mr. Gray what you and Mr. Maiorana talked about?

A Only that he was requesting a fleet certificate number.

Q When was this?

A This would have been in 1966, shortly thereafter the initial meeting I had with Maiorana.

Q Was this shortly after March, 1966?

A It would have been after the initial meeting, yes.

Q But not more than several months, is that correct?

THE COURT: He said "shortly."

MR. PERSON: I'm trying to put it into a --

Q Did you go to the NAFA meeting later on that year?

A I have been going to those meetings since 1959.

Q Do you recall if your meeting with Mr. Gray -- was it a meeting or a telephone communication.

A I have no recollection of that.

Q Was this communication with Mr. Gray before you attended the NAFA meeting?

A I would have no recollection of that.

Q Can you please state what you and Mr. Gray said to each other concerning Nabcor?

A I don't think we had any conversation as far as Nabcor was concerned.

I asked him what requirements a prospective fleet account would need to secure a fleet application.

He told me at that time that they needed proof of registration of the vehicles that were purchased the previous year.

I so reported to Mr. Maiorana.

Q When you say "fleet application," you mean fleet certificate?

A Fleet certificate application.

Q Did Mr. Gray indicate that a fleet certificate was not required for any kind of fleet benefits under GM's various plans?

A I don't think we had any discussion to that extent because there was no need for a discussion on that.

Q Was there any discussion at all why Mr. Maiorana wanted a fleet certificate?

A No.

Q Do you know what a fleet certificate does for a holder of it?

A Not really.

Q Were you operating Mr. Dillon's or Ruckle's business concerning the supplying of new automobiles to doctors?

A Yes.

Q Did you apply yourself for a fleet certificate?

A No.

Q Who did?

A I have no idea. They had a fleet

certificate number before I ever went to work for them. I believe Mr. Dillon testified that his leasing company started in business in 1957. I went to work in 1965.

Q Aren't fleet certificates renewed anually?

A I have no idea.

Q Did you submit orders yourself to the factory at times?

A Yes.

Q Have you yourself submitted any fleet orders to the factory?

A Yes.

Q Have any of these fleet orders included the identification, that is, the fleet certificate number, of the person for whom you are ordering the car?

A You mean with the fleet certificate number on the factory order?

Q That's right.

A Not to my knowledge. I don't recall ever having read a fleet certificate number on a factory order in ten or more years.

Q Have you had any conversations with

the zone concerning the identify of any person for whom you submitted a fleet order?

A How do you mean that?

Q Has the zone ever called you up to ask you who it is that the fleet order you submitted was for?

MR. KAPLAN: Can we limit to Nabcor?

THE COURT: Overruled.

A I don't recall.

MR. PERSON: We have an Exhibit B-7 in evidence, a record of cars purchased by Nabcor from Ruckle Pontiac.

Q Please take a look at this exhibit, Mr. Stewart (handing). This is a compilation of information in the possession of Ruckle Pontiac at the time this litigation was instituted.

The fourth column has the indication "Fleet" in many instances down to 10/3/66, with a couple of exceptions. There are two orders that were stock.

As to those fleet orders, do you recall any of those fleet orders for Nabcor?

A No.

Q Do you know why these were submitted

as fleet orders to the factory?

A A little earlier in my testimony I said I didn't think it made much difference on a factory order whether you have "sold," "fleet," etc.

2B

Q Are you testifying that you had a practice of not being consistent as to what you designated the order as?

A I didn't say that.

Q Did you intend to be consistent or not?

A As I mentioned previously, it didn't make any differencebecause we got the cars anyway as long as we ordered them.

Q Did you try to be consistent in the fleet department in the method in which you ordered cars from the factory?

A I think so.

Q Is it true then that at the time you ordered these automobiles as fleet orders for Nabcor from the factory you were also using fleet orders for other fleet accounts of Ruckle?

A Yes.

Q Turn to the last two: 10/13/66 and 10/13/66, and the remaining sold orders on the following page. Why is it you suddenly changed and called these "sold orders" on your applications to the factory, that is, on your submission of orders to the factory?

A There is a possibility that I was not the one writing the orders at that time.

Q Have you ever talked with anyone why there was a sudden change as of one date where all the orders subsequent to that became "sold orders" rather than "fleet"?

A I can give you an indication that would be quite accurate.

Q Okay.

A In the late summer of '66, that was when I hired Walter Grimm. When I hired him, he started writing factory orders. I did not look at any of the orders he wrote. It is possible he put "sold" on them because obviously the cars were sold.

Q As to all of the fleet orders the word "fleet" dropped out of your vocabulary at that time?

A Not necessarily.

Q So other orders were still being submitted "fleet" at the time you changed and called Nabcor orders "sold"?

A I don't know whether it is true or not.

Q Do you know whether it is false?

A I don't know.

Q Do you recall having a conversation with Mr. Dillon concerning a meeting with Mr. Dillon and an official of General Motors, Mr. McNamara -- I think his name was?

A No. The first I heard about that meeting was today when he and I were riding down to the court.

Q You don't recall having talked to Frank Maiorana about that?

A About McNamara?

Q About a high factory official.

Do you recall talking to Mr. Maiorana about a high factory official who met with Mr. Dillon at his home one weekend shortly after Ruckle stopped dealing with Nabcor?

A No, sir.

Q You don't recall that?

A No.

Q Do you recall talking with Mr. Maiorana at all concerning the reasons why Ruckle Pontiac refused or stopped dealing with Nabcor?

A The only reason I stopped dealing with Frank Maiorana was because the gentleman who was paying my salary told me not to.

Q When did he tell you this?

A He testified to this this morning.

Q I know he testified, and maybe we should have excluded you from the room -- you were in the room then, were you not?

A Yes.

Q When is it as to your own memory the event occurred? More than once?

A I can't recall the date. It could have been December 14th, for all I know.

Q You heard that date before?

A I heard that date.

Q But do you recall when it occurred?

A Not really, because at the time it would have been very unimportant to me.

Q In other words, if Mr. Dillon told you not to deal with Nabcor any more, that was unimportant to you?

A It would have been at that particular point in time.

Q Unimportant or important?

A Unimportant.

Q Why?

A Because I had a fairly good volume of business that we were working up to. I did not consider Nabcor that big a volume account.

Q Was it material to you? Would you have acted upon Mr. Dillon's instruction to you, not to deal with Nabcor?

A I did act upon his instructions not to deal with Nabcor.

Q When did you stop dealing with Nabcor?

A I would think --

Q Approximately. Think right now.

A The last of the orders -- I would presume that any of the orders that were in at the factory would have been delivered. That would have been some time --

Q The date of the Nabcor order, the last one on the list of the second page of Exhibit B-7, was January 27, 1967.

A That was the last one we delivered?

Q That was the last Nabcor order to Ruckle.

A But that was not the last one we delivered to him.

Q In terms of time it happened --

A According to this, it said the date of the last Ruckle invoice to Nabcor was on March 10, 1967.

Q Look to the left. Look at the second column on that same line.

A The date of the Ruckle order from GM?

Q The date of the Nabcor order was January 27.

A Yes, January 27, 1967.

Q And that was a month and a half after this meeting?

A What meeting?

Q The meeting you referred to, the December 15 meeting.

A You referred to that. I didn't refer to that meeting.

Q Which meeting were you talking about?

A The one you referred to.

THE COURT: I don't know if anybody has fixed that date.

Q December 15th?

A I may be wrong. I heard a date of December 14th. I accepted that as the day I was told. I don't remember.

Q In other words, was January 27, 1967, the approximate date that you talked with Mr. Dillon about Nabcor?

A I could not answer that question.

Q In light of what you said before, isn't that, in effect, what you said?

MR. KAPLAN: I object to that.

THE COURT: Objection sustained.

Q Did you talk with Mr. Dillon on or about the date you accepted the last order for Nabcor?

A I have no idea. You are going back nine years ago. I talked with Mr. Dillon three times a day. How would I know when the last time was that we discussed this particular incident?

Q I have a group of orders, Nabcor purchase orders, dated February.

A They are all dated right here.

Q These are not included on the list. These are dated in February, 1967. One of them is Exhibit 472, and the others are in consecutive number with that. Take a look at them, please (handing).

A (Pause.)

Q Also the several confirmation cards that are included.

A (Pause.)

Q Have you ever seen these orders before?

A It has been so many years. I delivered 27 automobiles to him, so certainly I must have seen some of the orders. I don't recall the exact orders.

Q The date of the last order, the last Nabcor order, according to this Exhibit B-7, was January 27, 1967. You can see --

A I will accept that.

Q Here are Exhibits 470 and 471 in evidence. Please look at them.

A What is this?

3A

Q This is an envelope from Ruckle Pontiac to Nabcor, together with a note from Walter Grimm.

A Yes?

Q Could you look at the date on this envelope? I will read it. March 20, 1967.

A Yes, I see that.

Q Can you tell me why, from January 27, 1967, through March 20, 1967, Nabcor was not advised of the refusal to deal?

MR. KAPLAN: Object to the form.

THE COURT: Sustained.

Q That Nabcor was not advised that Ruckle was not going to fill these nine orders?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Do you have any information on why the nine orders were returned to Nabcor on March 20, 1967?

A I know why we quit doing business with Nabcor.

Q When did you quit?

A I don't recall.

Q Could you state why you quit doing business with Nabcor?

A Mr. Dillon told me not to sell them any more.

Q Was it at or about the time that the orders were returned?

A I have no recall on that whatsoever.

Q Did you tell Mr. Grimm to return any outstanding orders?

A Evidently I did.

Q On this order form, Exhibit 628, which is the order form that you have seen, there is an indication for a check to be made in either truck, truck-boat-truck or rail. Are you familiar with that part of the order form?

A Yes.

Q Could you describe what that means, please?

A It was a method of transportation of the vehicle from the factory to the dealer.

Q And did you have a choice as to the method?

A No.

Q I'm sorry?

A No.

Q You had no choice?

A I say that we had no choice, but the only obvious way they could ship them was by truck.

Q Were you allowed to designate what could be the trucking company for the deliveries to Ruckle?

A That would have been beyond my domain, so to speak.

MR. KAPLAN: Your Honor, I will object to this line as irrelevant.

MR. PERSON: It is in the action, your Honor.

THE COURT: What is the line?

MR. PERSON: The destination charge.

THE COURT: Objection is sustained.

MR. PERSON: A few seconds, your Honor, and I will be done.

(Pause.)

Q Do you recall meeting with Mr. Maiorana in, say, September, 1966, at a NAFA meeting?

A When was the original letter written?

Q March, '66, March 22, 1966.

A It's possible.

Q Do you recall whether you introduced Mr. Maiorana to Mr. Holsworth of the Pontiac zone?

A I would have no knowledge of that.

Q Or Mr. McMahon?

A I would have no knowledge of that, no recollection.

Q Do you recall being at a bar in the hotel at which the NAFA meeting was being held?

A Well, first I'd have to say that these meetings were monthly meetings.

Q NAFA?

A Yes, and I rarely missed them, and I used to meet an awful lot of people at the bar, so it's possible.

Q Do you recall introducing Mr. Maiorana to --

A Not really.

Q -- to Mr. Morrison, Bud Morrison?

A I must have, because Mr. Morrison went to work for Mr. Maiorana and I know that I at one time or another had to introduce him.

MR. PERSON: No further questions.

THE COURT: All right, cross-examine.

$87:CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Stewart, I would like to invite your attention to Plaintiffs' Exhibit 483 in evidence, copies of which I believe the jury has.

MR. Stewart, when you first met with Frank Maiorana in March of 1966, Mr. Maiorana promised that he would buy a minimum of 200 new Pontiacs from Ruckle Pontiac that year, is that right?

A Correct.

Q And the price you agreed upon was $75 over invoice less 1 per cent, true?

A True.

Q And in arriving at that price, sir, you considered the volume, did you not?

A Yes, I did.

Q And you gave them a lower price than you would have given had they told you they, in fact, were going to order only 27 cars over the year, true?

A Correct, true.

Q And, in fact, Nabcor didn't order anywhere near 200 cars over the ensuing year, true?

A True.

Q By the time you spoke with Mr. Dillon about Nabcor, you had yourself become dissatisfied with the Nabcor account, true?

A True.

Q One of the reasons is that because they hadn't --

THE COURT: I don't think you can lead. You let him tell you the story in his words.

MR. KAPLAN: If your Honor please, I think it is cross.

Q Well, had you become dissatisfied with the Nabcor account?

THE COURT: What was the course of the account? Let's have your testimony, your words. What happened?

THE WITNESS: You are talking to me?

THE COURT: Yes.

THE WITNESS: Well, I think that one thing that you would have to understand is that when you are selling fleet cars you are selling automobiles at a substantial discount below retail, and you do that because you are looking for volume, and any time that you have to spend an undue length of time to service an account determines whether you want to continue your relationship with that account.

In this particular instance, when Mr. Dillon told me that he didn't want me to sell them cars any longer, I had no compunctions whatsoever about not doing business with them because there wasn't any volume.

Q Now, sir, was Nabcor always prompt in picking up cars that it ordered from you?

A No.

Q And I invite your attention to Defendants'

MR. KAPLAN: If your Honor please, I would like to read in evidence a stipulation which was agreed to by Mr. Person and I at the hearing which preceded this trial at page 869 of the record of that hearing with respect to the fleet plans, the fleet allowance program.

We stipulate that the fleet plans in effect for Chevrolet for the years 1967 through 1970 were identical with Defendants' Exhibit WWWW, which I will offer in a moment, in all material respects except two. The first respect is that the 1967 plan, alone of those four, required that in order to be a qualified fleet user for the purposes of the plan, the company had to have purchased and registered or leased 20 or more new cars within the relevant period, whereas all of the subsequent plans reduced that figure to 10.

The second respect in which the 1967 plan differed from all of the subsequent plans is that under the 1967 plan the purchase allowances which have been referred to by some of the witnesses as rebates were payable exclusively to the dealer who sold the vehicle. In 1968 and subsequent plans, the allowances were payable to either to the credit of the dealer or to the purchaser, the fleet purchaser, at the dealer's request.

That appears in the plan.

Mr. person and I, I believe, have also agreed that the Chevrolet plan referred to here is identical in all respects to the Pontiac plan throughout those four years.

Is that correct, Mr. Person?

MR. PERSON: Substantially, I believe, yes.

THE COURT: All right. The inclusive years?

MR. KAPLAN: 1967 through '70.

THE COURT: All right.

MR. KAPLAN: And I would then offer Defendants WWWW, 1968 Chevrolet fleet plan, which I have just referred to.

THE COURT: Received.

(Defendants' Exhibit WWWW was received in evidence.)

BY MR.KAPLAN:

Q Now, Mr. Stewart, I am going to show you Defendants' WWWW, the Chevrolet fleet plan, and we have now agreed, if you followed us, that the Pontiac one was substantially the same.

You were familiar with that plan as it applied to Pontiac, were you?

A Yes.

Q Sir?

A Yes.

Q And you could get fleet allowances on sales made to qualified fleet users under that plan, true?

A Yes.

Q And one of the things that you were able to use this National Account List for, Plaintiffs' Exhibit 626, was to determine in advance whether a particular company to whom you were going to sell vehicles was eligible, for you to get the $50 allowance, true?

A True.

Q And the fact that a company was in the book meant that you could get the $50, true?

A True.

Q And the fact that it wasn't meant you had to ask somebody whether you could get the $50, true?

A True.

Q You were asked, Mr. Stewart, with respect to Defendant's Exhibit B-7, some questions about the change in marking these orders fleet to sold.

A Yes.

Q Would you look at the exhibit, sir. There was no difference in the amount of time it took for automobiles to come into Ruckle as compared to when they were marked "fleet" or "sold,Z" was there?

A No, none.

Q And nobody at General Motors ever questioned you or anyone else at Ruckle as far as you know about who you were marking these orders for, for fleet, is that right?

A No, sir.

Q Did you ever convey an offer to Frank Maiorana on behalf of either yourself or Mr. Dillon to buy an interest in Nabcor?

A No, sir.

Q I think, sir, you mentioned you knew a man named Bud Morrison?

A Yes, sir.

Q He was the fleet manager at Don Allen Chevrolet before December, 1966, true?

A True.

Q And there came a time when he went to work for Nabcor, true?

A True.

Q And did you have a conversation with him about Nabcor's business after he went to work for Nabcor?

A With whom?

Q Mr. Morrison.

A I had a conversation with him after he went to work with Nabcor.

Q I'm asking you whether you did. Did you speak to Mr. Morrison about Nabcor after he worked at Nabcor?

A I introduced him to Frank prior to the time that he went to work, and we knew what Frank was doing with the cars.

Q Did you speak to him again after he went to work for Nabcor?

A Yes.

Q And what did you say to him and what did he say to you on the subject of Nabcor's business?

A He said he was very unhappy.

Q What else was said?

A He said he was leaving.

Q Did he tell you why?

A Yes, he did.

Q What did he say?

A He said that Mr. Maiorana had not lived up to his obligations.

Q Did he say anythint else?

A Not that I could have total recall on.

Q Did he say anything on the subject of franchise sales?

A I don't have any recall on that.

Q Now, sir, apart from the conversation with Walter Grimm that you described to Mr. Person a few minutes ago, did you ever talk to anyone else employed by General Motors other than the lawyers, whom you have been blessed with in the last two years, about Nabcor?

A No.

Q Did anyone at General Motors ever tell you or anyone else at Ruckle, as far as you know, not to sell cars to Nabcor?

A No.

Q As far as you know, was the decision by Ruckle not to continue to deal with Nabcor a decision reached by Ruckle alone without any influence from anybody else?

A That is true.

MR. KAPLAN: No further questions.

$89:REDIRECT EXAMINATION

BY MR. PERSON:

Q You mentioned your dissatisfaction with Nabcor.

A I didn't mention mine.

Q You didn't have any dissatisfaction, it was Mr. Kaplan that had it?

MR. KAPLAN: I object to that, your Honor.

Q You have had no dissatisfaction --

THE COURT: It isn't all that bad. You were the one, it was your words, if I remember.

MR. KAPLAN: Well, I certainly concede the dissatisfaction on my part.

Q So that you didn't discuss with Mr. Dillon anything about Nabcor's buying practices from Ruckle, anything adverse, anyway?

A Anything adverse? I mean he had the same information available to him as far as, you know, for talking about the volume of business that we were doing with them and so forth, but he was not involved -- he would not have had any question to ask me on the account.

Q Isn't it true that financing notes allow a 30-day grace period before interest is due?

A That is untrue.

Q At no time --

THE COURT: What's the question and answer.

(Record read.)

Q At any time?

A It's incorrect.

Q Did you ever have any accounts, any fleet accounts, to whom you sold only one car?

A Yes, too many.

Q So a company that you sold -- how many cars were there here that you sold to Nabcor?

A Twenty-seven.

Q And that was a lot more than one, wasn't it, and you were dissatisfied with the volume?

A I was dissatisfied with the volume, but Mr. Maiorana had given me a letter in March, I believe it was, you showed me, that he was going to [illegible] ordering 200 orders and during that full year he only purchased 27 cars.

Q How many accounts ordered 200 cars from you, or more, during that period?

A I have no idea.

Q Was Nabcor one of the largest accounts at that time, in 1966?

A I have no knowledge.

Q Is everyone prompt in payment?

A No.

Q Aren't leasing companies, in fact, customarily paying you 30 or 60 days after the car is delivered?

A That is incorrect.

Q Did you ever ask Mr. Maiorana to pay the interest that was involved on three, five or ten, even up to 129 days in delay?

A I have no recollection that Mr. Maiorana ever paid any interest charges.

THE COURT: The question was did you ever ask him to do it.

BEST COPY AVAILABLE

A I don't recall.

Q Did you ever negotiate with any of your customers to have the customer pay that interest?

A You say do we?

Q Have you ever?

A Oh, yes.

Q Did you negotiate with Frank?

A I would presume that we did.

Q You don't recall though?

A I don't have any recall on exact conversations, no.

MR. PERSON: No further questions, your Honor.

THE COURT: Let me see the lawyers at the side bar.

(At the side bar.)

THE COURT: Isn't anybody going into that thing with Stewart, the letter that was given, sent to him about --

MR. PERSON: He testified already on that.

MR. KAPLAN: It was gone into.

MR. PERSON: Nobody knows anything about it.

BEST COPY AVAILABLE

THE COURT: I guess you showed him the letter, didn't you?

MR. PERSON: I think I did.

THE COURT: March 10th, you showed --

MR. PERSON: The '67 letter, to the first witness. I have forgotten about the second.

MR. KAPLAN: You did; you showed him the letter and he was vague on the letter but he remembered the episode.

THE COURT: But you asked him whether this related to Turco.

MR. KAPLAN: There had been a prior discussion about the incident with Turco involving the retail salesmen complaining, and Mr. Person's question was in the context of asking him whether the letter related to the incident which had been discussed, where the retail salesmen complained, and your Honor asked him a lot of questions about what it meant.

THE COURT: I didn't ask him a lot of questions about what it meant. The thing is I have this feeling, maybe it's an oversight, that he was never really asked if he knew what it was that Maiorana was referring to, and maybe he has been, but, you see, I don't know what this means, but I just have a nagging feeling that there is something that hasn't been covered.

MR. PERSON: I think it's been covered, your Honor. The answer is dropped out as an issue.

MR. KAPLAN: I don't agree with that.

THE COURT: You see, Dillon testified that he gave Stewart an order first to stop selling cars; then he said at some point he found out that Stewart was still selling cars, and he had to have a second talk with him. You never asked him what the second talk was, nor did you.

MR. PERSON: He doesn't recall.

THE COURT: You never asked him, nor did Mr. Kaplan ever ask him, so that whatever there was on that, nobody bothered to ask him.

MR. PERSON: Let's ask him.

THE COURT: All right. That was to Dillon -- Dillon was never asked that. Now, Stewart was never asked if he remembers any incident about being ordered once and then being ordered the second time, so --

MR. KAPLAN: I thought he was, your

Honor.

THE COURT: No, he was not.

MR. PERSON: I thought he can't remember.

THE COURT: He wasn't asked.

MR. PERSON: I tried to ask.

MR. KAPLAN: I think it was.

THE COURT: Well, I don't know whether that leads anywhere.

MR. PERSON: I don't think so.

THE COURT: Let it go?

MR. KAPLAN: I'm content to let it go.

MR. PERSON: Your Honor, I have a request now, inasmuch as we have had the opportunity for cross examination, may I put Mr. Maiorana on to tell his side of the story?

MR. KAPLAN: No. Your Honor, we are getting chopped up on this Maiorana examination. He's on again, off again.

THE COURT: I don't worry about that at all. I just want to get the facts out.

MR. PERSON: And let them stay here and listen.

THE COURT: I want to be clear on one thing.

At the time Mr. Dillon came to you and directed you not to sell to Nabcor -- you recall being asked about that?

THE WITNESS: Yes.

MR. KAPLAN: -- Mr. Kaplan asked if you were dissatisfied. I want to know now, in your own words, had you talked to Mr. Maiorana about the volume of orders he was placing? Had you asked him anything about his letter about 200 cars, or done anything? You know what I'm getting at?

THE WITNESS: Yes.

THE COURT: Had you done anything along that line?

THE WITNESS: We are going back to the original conversation, and I believe my original introduce, as best as I can recall, was the setting up of an appointment over at the Yonkers office in the motel. We met down in the coffee shop.

THE COURT: Maybe I missed something. Was that your first meeting?

THE WITNESS: As far as I can recall.

THE COURT: It was at a motel?

THE WITNESS: Yes.

THE COURT: Was this at Nabcor's office?

THE WITNESS: Yes.

THE COURT: What's the name of the place?

MR. PERSON: Westchester Town House, I believe.

THE COURT: Nabcor had an office there?

THE WITNESS: Yes.

THE COURT: You met at the coffee shop?

THE WITNESS: We met at their office and then went downstairs to the coffee shop. There were a lot of people moving in and out of their offices.

THE COURT: You were there with Mr. Maiorana?

THE WITNESS: Yes, and a manager of his at that time.

THE COURT: Go ahead.

THE WITNESS: The original conversation had to do with the purchasing of automobiles in quantity, and he wanted to embark on his program nationwide. I was very interested in selling automobiles and told him if we were to get involved in the selling of automobiles, naturally, delivering to other states -- this term of drop shipment they had used previously -- the manner in which I would be able to do that was if he was a recognized fleet account, a commercial account, buying 20 or more cars a year, utilizing these automobiles in your own company use or a leasing company.

Mr. Maiorana told me that he had a leasing company. He had a leasing company in Philadelphia, and that there would be no problem to secure copies of registrations and so forth.

THE COURT: I'm very, very sorry to interrupt you in midanswer. I am going to take a short recess and then I'll speak with the lawyers.

(Recess.)

THE COURT: I want you to realize you are distracted in midanswer, so do not talk to anybody.

BEST COPY AVAILABLE

THE WITNESS: Yes.

(In the robing room.)

THE COURT: Maybe I am really having mental lapses this afternoon, but it is my distinct impression that what he is now saying has some importance to the case and was not brought out by either side on their examination before.

There is absolutely no use playing around and bringing witnesses in and not getting their full story. That goes for Mr. Person and it goes for Mr. Kleinbard and it goes for Mr. Kaplan. If I have to take over the examination I will. I don't care if these people have to come back day after day after day.

MR. PERSON: We are both surprised.

THE COURT: You did not ask. Your questions were very narrow. You did not ask for the full story. It's dangerous to say that. Obviously the record might belie what I'm now saying, but I'm 90 per cent sure that when we go over the transcript of your examination it will reveal that you were asking him very narrow questions; you were not asking for the whole conversation.

MR. PERSON: I usually do, your Honor.

THE COURT: We will have to check that.

MR. PERSON: Mr. Kaplan.

THE COURT: Just a minute.

Mr. Kaplan, of course, it is not his burden of proof, but I must say to you, Mr. Kaplan, I have felt heretofore, and I have certainly hoped heretofore, that you were trying to bring out the whole story to the extent that Mr. Person did not. I have a very uncomfortable feeling about this last witness. This is as a result of starting right now.

I think both of these men better come back here Monday and I think you better make up your mind that these people are going to tell everything that happened that's relevant, and you have to figure out ways to draw it out.

Mayve this is not so much true of Dillon. I think Dillon was examined in a more satisfactory fashion, but certainly this witness -- this is ridiculous, on the court's questions after direct examination and cross examination, to find out for the first time the full conversation that occurred when he originally talked to Maiorana. That is quite important.

MR. PEARSON: I agree with you. I don't know what was said, at least from his standpoint --

THE COURT: I don't think you asked him. Sure as I'm sitting here you never asked him.

We are reviewing this whole ground by itself in view of the fact that the depositions of these people have never been taken.

I understand you are in some difficulty. You don't know what they are going to say. But I have to say to you --

MR. PERSON: I'm willing to explore everything.

THE COURT: I don't think you are.

MR. PERSON: I'm willing to roll the dice because my clients deserve it. I know you don't accept that. That's why I was willing to call them. Let me have unlimited examination opportunity --

THE COURT: You had him and the trouble is you asked about the procedural things, and when it came to the crucial things you had narrow questions. As far as I am concerned you didn't really ask him. I can't have that.

Something has to happen to shed the light on this case. We cannot go week after week with the plaintiffs' witnesses testifying with their severe problems of credibility, I continue to maintain, and their inability to observe what went on with the dealers from the standpoint of the dealers. That doesn't make a case. So-called admissions by one or another of General Motors, that doesn't make any case.

What I was hoping for, and to some extent it occurred today, it was a pretty good day in some ways, I was hoping that we would have some event in this case that would show where the case was going. I was hoping by bringing in some dealers and really objectively examining them, getting their whole story out, we would see some kind of clear handwriting on the wall so we could get illustrations, salient illustrations, of the kind of evidence available here. It looks as if, when we get to the dealers, the people who really have knowledge, if your case is going to collapse, we might as well know it is going to collapse. On the other hand, if the dealers were really in cahoots with General Motors, let's know it. It's to nobody's advantage to have it covered up. Let's get it out quickly and not prolong the agony. That's why I was so gratified that these people were here today.

ping place in five minutes. I have to leave in five minutes and then we will have to reconvene Monday. I want him back. I want his whole story.

(In open court.)

(Jury in box.)

THE COURT: I have to adjourn in about five minutes because I have to attend some kind of ceremony.

I don't believe Mr. Stewart's testimony will be completed in that five minutes. He will be back on Monday. I interrupted him in mid-answer. I think perhaps he could get at least to a stopping point in a few minutes.

I will ask the court reporter to read his answer as far as he went and then we will go on for a few minutes.

(Record read.)

THE COURT: What we would like to have you do is to go ahead and give us, as best as you can recall, the substance of that conversation completely, and and then other conversations.

Can you do that in three or four minutes, or do you want to come a stopping place?

THE WITNESS: I will try.

In order to have secured a fleet --

THE COURT: Is this something you told him?

THE WITNESS: Yes.

THE COURT: Go ahead.

THE WITNESS: In order to secure a fleet certificate holder we would have to have registrations of automobiles that were currently in use, and we never did get -- we got some copies of registrations, but they were not copies of registrations that were acceptable for consideration in an application of a fleet certificate number. I forgot what the nature of the registrations was, whether they were individual registrations or what have you, but they were not a recognized fleet account.

THE COURT: We will pursue this further on Monday.

We will adjourn, ladies and gentlemen, until 10.00 a.m.

We have a new courtroom which as not as elegant, but we will have some light. I am referring to Room 128. The clerk will tell you where that is.

Good-day.

(Time noted: 3.55 P.M.)

(Adjourned to November 1,1976, at 10.00 A.M.)

sations which you started to give at 868 and 869.

A These conversations, your Honor, are conversations that occurred over a period of time.

THE COURT: Tell us all about them.

A To the best of my recollection, testimony that I gave on Friday is complete up to this point where you interrupted me, but at that particular point in time when I said Mr. Maiorana had said there would be no problem seucuring copies of registrations and so forth, if I may offer my own comment --

Q I'm not asking you for your comment.

A This had to do with registrations.

Q Let me question you, please.

I asked you to complete your testimony about that conversation and you say that's all there was to that conversation, is that right?

A The only thing that would have come after that would be that the registrations were not acceptable to General Motors because they did not prove that the automobiles were on lease, nor did they prove they were company-owned vechiles. The automobile at that point, the registrations that I had, to the best of my knowledge, were more in the nature of individual registrations of cars.

T3

Q But I am asking you about conversations.

Now, was there any follow-up? What happened next after this conversation?

A All of this information, of course, that I secured from Maiorana had gone to the fleet representative of the Pontiac Motor Car Division.

Q Just take it in very slow steps. After that conversation, what happened, did you talk to somebody or he talk to you again? What happened?

A After I had given the registrations to Walter --

Q Did somebody give you registrations?

A Maiorana.

Q Was there a conversation or was it in writing?

A In a meeting.

Q It was in a meeting. What was said in that meeting?

A I don't recall the exact conversation that took place. But at that point in time I was trying to secure a fleet certificate number for him.

Q What were you doing to try to secure that?

A He had to give us copies of registrations of automobiles that would prove that, No. 1, that he was a fleet operator, meaning buying, owning and operating 20 or more cars a year.

Q You have said that several times. Now, I want to get what happened. Did you talk to somebody at General Motors about getting a fleet certificate or talk to Frank Maiorana? What did you do?

A This would have been a conversation I had with Walter Gray.

Q Did you have a conversation or conversations with Walter Gray?

A Yes, I did.

Q What was the conversation?

A I explained the conversations that are recorded here in the testimony on Friday that he was going to be in the leasing business.

MR. KAPLAN: Can we have who the "he" is, your Honor?

Q Who was the "he"?

A Maiorana.

Q Was this on the telephone or face to face or what?

A Some of these conversations took place on the telephone and some could have been in person.

Q The conversation with Walter Gray?

A With Walter Gray would have been person to person.

Q What did you say? Did you call Mr. Gray -- I am sorry. You say in person with Gray?

A Yes, I had a lot of phone coversations with him in person and over the telephone.

Q Now, what happened? Did you call Mr. Gray and introduce the subject of Nabcor?

A I had called him and --

Q Did you bring up the subject of Nabcor? What did you say about Nabcor?

A I think at that time my conversation would have been no more than I was trying to secure a fleet certificate number for him and if I were to secure a fleet certificate number, then I would be able to handle a large number of car sales in Nabcor.

Q What did Mr. Gray say?

A This is a conversation where Mr. Gray said we have to have proof that he is in the fleet business, owning or operating 20 or more cars a year.

At that time Mr. Gray informed me that in order to qualify we would have to have a documented proof and the only documented proof would be registrations, copies of registrations, and Mr. Maiorana agreed that --

Q Then did you go back and talk to Mr. Maiorana again?

A I went back and talked to Mr. Maiorana again and I gave the conversation that I had with Mr. Gray and we had to have documented proof. Mr. Maiorana said, "There is no problem, I will get you documented proof."

That would have been the end of that conversation up until the time that --

Q Just a minute. What happened then?

A Nothing.

Q Did Mr. Maiorana come back to you and give you a document or talk to you?

A After a period of time, maybe a week or so, he said he would have to get that information out of Philadelphia.

Q What?

A He would have to get that information from Philadelphia, presumably the leasing company that he had.

Q Not presumably, just what did he say?

A He said he had a leasing company in Philadelphia.

2

Q Then was it after that there was a week or so elapsed?

A It could have been probably a week or several days. After a weekend in Philadelphia where he was going to be going. He was living down there.

Q Then what happened?

A He brought back registrations.

Q Did he come to see you?

A Yes. Either came to see me or I went over to his office.

Q But you met together in the office?

A Yes.

Q What was that conversation and what happened?

A He gave me the registrations.

Q What form were those, lists of cars?

A Copies of registrations, automobile registrations.

Q How many?

A I don't recall the number.

Q What was the conversation?

A I don't remember any particular conversation other than the fact that he gave me the registrations, and I said I will turn them over to Mr. Gray.

Q Did you look at them?

A Yes, I did.

Q What did they say?

A Registrations for automobiles but not registrations of leased cars.

Q What were they?

A Private registrations, presumably.

Q Did you look at them there? Did you say anything about that to Mr. Maiorana?

A I told him that I would turn them over to Pontiac. It wasn't my decision to make. I turned them over to Walter Gray for his consideration.

Q Did you look at them, whether it was your decision or not? Did you look at them and have any talk with him about them?

A I know that I looked at them. What kind of conversation I had, I don't recall. I think the conversation I would have had is "Okay, fine, thank you, let me turn these over to Mr. Gray and see what his response is."

Q What happened then?

A I turned them over to Mr. Gray and, as I recall, I presume -- I recall -- I don't recall whether it was at my office or at his office I turned the registrations over to him.

At that time his office was in the Coliseum Building on 59th Street. But just looking at the registrations, he told me they are not acceptable. He said these are not fleet registrations, these are individual.

Q Then what happened?

A That was the end of the conversation as far as I am concerned about his attempting to get a fleet certificate number. I don't recall anything further than that.

Q Did you convey that to Mr. Maiorana?

A I conveyed that information back to Mr. Maiorana.

Q What did you say?

A Just told him that they would not issue a fleet certificate number because he didn't qualify.

Q What did Mr. Maiorana say?

A I don't recall at the moment.

Q About how long did that take from the outset of the conversation about the fleet certificate that you testified to Friday until this final conversation you mentioned just now?

A I have no idea. I don't recall how much time that would have taken. It could have taken a month or two months.

Q Do you remember when it was, what year?

A I don't recall whether it was 1966 or 1967. I would presume it would have been 1966.

Q Were you during this time selling cars to Mr. Maiorana?

A I believe so. I don't recall when the first order was that I received from him.

THE COURT: Do you have that exhibit?

Q Could you look at that B-7 (handing to witness).

A If I had that letter it would help refresh my recollection as far as dates are concerned.

THE COURT: Give him 483 and that 1967 letter.

(Handed to witness.)

A (Continuing) I would presume that this letter was received by me, written on the 22nd of March, 1966, the date of their first order was March 28, so it would have been a week later.

This letter referred to the first meeting that we had.

Q This line of testimony Friday started

because I asked you if you had ever indicated to Mr. Maiorana any dissatisfaction with the volume of his orders or his methods of doing business, anything like that. At that point you went back into a description of the fleet certificate business.

Now, I go back to my original question to you: did you at any time indicate to Mr. Maiorana any dissatisfaction with the volume of his orders or his method of doing business in any way?

A Knowing my modus operandi, so to speak, if he sent me a letter saying that they were going to buy 200 cars a year and we started doing business with them in March and if by the end of May we only received six or seven orders, I would have expressed dissatisfaction, because his volume was not in keeping with the volume that he stated that I would receive.

Q Do you remember whether or not in fact you did express dissatisfaction of that kind to Mr. Maiorana?

A I think, your Honor, you would have to remember that, No. 1, I am a salesman and you are always applying pressure to receive more business and this pressure can take several different turns, so to speak.

I am always putting pressure on to get more sales.

Q The question is whether you recall doing it here or not?

A No, not specifically, your Honor.

Q Did you ever complain to Mr. Maiorana about any problem about him in making payment or anything to your memory?

A No, because, as I recall it, his payments were made at the time that he picked up the cars. As a result we never opened up a credit line for him.

THE COURT: All right, Mr. Person.

BY MR. PERSON:

Q I have Exhibit for identification 633. It is a copy of a promissory note and apparently a bill of lading from one of the Ruckle Pontiac dealer folders.

THE COURT: Are you offering it?

MR. PERSON: I am offering it in evidence.

MR. KAPLAN: No objection.

THE COURT: All right.

xx (Plaintiffs' Exhibit 633 for identification received in evidence.)

BY THE COURT:

Q Mr. Stewart, you have testified again -- this is this testimony at 868 and 869:

"The original conversation had to do with the purchasing of automobiles in quantity, and he wanted to embark on his program nationwide. I was very interested in selling automobiles and told him if we were to get involved in the selling of automobiles, naturally, delivering to other states -- this term of drop shipment they had used previously -- the manner in which I would be able to do that was if he was a recognized fleet account, a commercial account, buying 20 or more cars a year, utilizing these automobiles in your own company use or leasing company."

You said on Friday that was at the original conversation. Is your memory now different, that it was not at the original conversation?

A I don't recall whether that entire context was taken up at that particular time. It could have been.

Q Earlier this morning you said that original conversation was just about price. Was there a discussion of this subject too or what?

A Let me clarify it. I said the original discussion had to do with the selling of Mr. Maiorana automobiles. In that conversation I had agreed that if he bought 200 or more cars a year his price would be such-and-such, period. That was the extent of the conversation. Beyond that I went no further. Any other subsequent conversations that I had would have been with him trying to prove to me that he was a fleet account and was trying to prove it to General Motors.

Q Why was he trying to prove it to you?

A Because in my area of operation I have contracts with companies to supply them with automobiles exclusively, meaning that all of the Pontiacs they would buy in the United States would be processed through me. I would then process all of the paper work so these vehicles would be delivered through other dealers and I would pay those dealers for the servicing of those automobiles. I would offer a service to the fleet account in that I was undertaking or offering my expertise in the business by lowering their purchasing cost. They only had one person to do business with as far as I was concerned.

I handled all of the administration and so forth. That was what this entire conversation was about.

He wanted to drop ship automobiles in other areas. I could not get involved in that unless I had 100 per cent cooperation from the corporation. If you were a Hertz or Avis you had to follow the same guidelines. These were guidelines --

Q What guidelines were these?

A As a national fleet certificate holder, so that we could enter into an agreement and supply them with automobiles throughout the United States.

Q Was there a requirement of General Motors that he had to have a fleet certificate in order for you to do business?

A Not necessarily. I would answer to that no. I know of none. But I needed cooperation from, shall we say -- I was just trying to think of the best way to state that.

In fleet accounts the manufacturer offers a great deal of assistance in the administration of your business because, No. 1, as we have admitted into evidence copies of factory invoices, these copies of invoices on automobiles that the manufacturer ships to us, those cars have to be ordered from the manufacturer, and at the same time you have to put delivery instructions on those cars. There are methods of allocation we referred to in earlier conversation about fleet and retail allocations. I had so many cars that were allocated to the dealership on retail. The manufacturer, using his previous experience in the number of automobiles that were sold to national fleet accounts, would allocate that number of automobiles naturally. My orders going into them would be drawn from this so-called order bank. Do you follow me?

Q Yes.

A If all of a sudden I came in with an account that was not a fleet account I would have to draw from my retail allocation. If I didn't have the retail allocation then I would have to go to fleet and if I could not get an allocation fleet and I didn't have an allocation from retail then I would have to turn orders down.

Q You asked if I told you. In a sense I don't, and I'll just ask you this. In order for you to get cars from the fleet allocation did the purchaser have to have a fleet certificate?

A Yes, sir.

Q Does that mean that when you turned in an order to General Motors labeled fleet, that you identified the customer or the fleet certificate number or something like that?

A Yes.

Q Yes?

A Yes.

MR. KAPLAN: If your Honor please --

THE COURT: Just a moment.

Q You mentioned in an earlier answer to me that there were people who, I think you said, told you you would be their exclusive source for Pontiacs.

A Yes.

Q That kind of thing, was that discussed with Mr. Maiorana or not?

A I don't recall at this particular moment but I think he could be included to that fact if I had been able to get him a fleet certificate. Then there would not have been an occasion to deal with multiple dealers.

Q Do you recall actually talking about the possibility or the subject of Ruckle being Maiorana's exclusive source of Pontiacs?

A At one point in time that would have come up, naturally, because I was interested in as much volume as I can get. It would be a natural part of the conversation.

Q After you were unable to get the fleet certificate or after Maiorana was unable to get the fleet certificate, and he was told that, was there any discussion of the consequences of that in relation to what you have been telling us just now in court?

A I think, your Honor, that you would have to be aware that at that particular time, and to the best of my knowledge, between Philadelphia and Yonkers I was selling a great many of these Pontiacs.

Q What do you mean, between Philadelphia and Yonkers?

A He had an office in Philadelphia, as I recall, and I was selling cars to both of those offices.

Q For delivery?

A Yes. They used to pick the cars up at the dealership.

Q At Ruckle?

A Yes.

Q Go ahead. Explain this.

A The whole thing has to do -- it goes back to allocation of automobiles. It goes back to the factory order. There had to be different blocks marked, fleet or retail.

All of the business idea is based on allocation of automobiles. The particular zone will have a certain allocation of cars. It can be broken down to fleet and retail. Once the allication has been used up, and this would be particularly true as far as retail is concerned, I would not be able to secure any more cars from the retail department.

Q I think we have that.

A Now, the only thing I could do was to sell only to those recognized fleet accounts where the allocation had been made up by --

Q My question is this. After you told Mr. Maiorana that you could not get a fleet certificate, you told us that this morning, at that time or at any subsequent time did you discuss with him the consequences of that in any way?

A I don't recall.

Q In terms of what we have been talking about this morning.

A I don't recall.

Q Did you tell him you could not longer get orders for him on the fleet orders?

A I think that would have been a natural part of the conversation.

Q Do you remember doing that?

A Not per se, no. It had to happen.

Q Did you talk to him as to whether or not you could be exclusive source of Pontiacs, that is, after this refusal of the fleet certificate?

A It's possible. I don't recall.

Q Do you have this Exhibit B-7 before you?

A No.

MR. PERSON: I'm giving it to the witness, your Honor.

(Pause.)

Q On the first page there are 11 orders that are designated "fleet."

A All right.

Q Was Nabcor mentioned in those orders?

A I don't recall. I don't have copies of the orders, your Honor.

MR. KAPLAN: Your Honor, it so indicates.

MR. PERSON: It is indicated as on the exhibit.

THE COURT: All right.

Q Did you discuss with him anything about price after you learned he could not get a fleet certificate?

A I don't have any recollection. We went on doing business.

Q At the same price?

A Yes, I think so.

Q You never said, "Since you can't buy 200 cars a year or get a fleet certificate, I have to raise your price"?

A It's possible I may have said that. I don't recall. Everything was based upon the original price I gave him, based upon 200 cars a year.

Q And he was not buying 200 cars?

A That's right. The year was not up either.

Q You don't recall ever discussing price?

A I don't recall. There is a possibility that I did, but I don't recall. We are going back ten years. There are certain things that -- familiarization with a piece of paper might unlock the door or something.

Q Do you remember an occasion when Mr. Dillon talked to you about the Nabcor account?

A I remember he was very upset, yes.

Q How many times did he talk to you about the Nabcor account?

A I would say more than once.

Q Do you recall his testimony Friday when he said he asked you first to discontinue and found out you had not and came back a second time? Did that occur?

A Yes.

Q Would you please tell us all the conversation you remember with Mr. Dillon about Nabcor?

A The only thing I recall is that he had asked that I discontinue the association. I don't recall anything more than that.

Q Did he ask you what Nabcor was?

A I don't recall now. I presume he did.

Q What did you do after he asked you to discontinue?

A I would have been inclined to go ahead and keep on delivering automobiles.

Q Why was that?

A We were interested in getting as much volume and profit as we could in the fleet department.

Q Did you tell him that?

A No.

Q What happened after that? You kept on dealing because you were interested and so forth, and then what happened?

A Shortly after that, or a period of time after that -- I'm not presently aware -- was when the competition came into being with one of the Nabcor dealers, a fellow by the name of Turco, who had been set up as a dealer in Yonkers, who was in competion with one of our retail salesmen and the retail salesman was complaining to Mr. Dillon about it. That would have been the second time that Mr. Dillon said -- ordering me to quit selling them cars and at that particular time I had to because we could not afford to jeopardize the retail salesmen's livelihood by offering him unrealistic competition.

Q Did Mr. Dillon ever say anything to you about a rip-off of the Nabcor franchises?

A I heard him say that Friday.

Q Did you hear him say that at the time?

A I don't recall. I don't recall any specific conversations as such.

Q Would you please go back and even though it may seem repetitious to you, you tell us exactly what happened about the Turco thing, who told you what, who apprised you of it and so forth, in as much detail as you remember and exactly as Mr. Dillon told you. Don't capsule these things all together. Give us every event.

A To the best of my recollection, one of our retail salesmen came to me and asked me who Nabcor was. I told him.

Q What did you say?

A I told him they were an automobile brokerage firm selling automobiles to individuals.

He said, "They are offering to give a sizable discount to one of my retail customers," and he says, "I can't sell him as cheaply as the Nabcor dealer is, plus the fact that the Nabcor dealer said Ruckle is going to service the car."

We said we know that's not going to take place.

Q What did he say about the certificates?

A Turco had told him that they would be getting the car serviced at Ruckle Pontiac, so it didn't make any difference to the customer how he obtained the automobile because he would get the same service.

Q Did you respond to that?

A I responded to that and at that particular time we quit selling cars to Nabcor.

Q Did you say anything about the service proposition?

A No. The retail salesman from Ruckle was merely reporting to me what his customer had told him, and his customer had told him that he could buy the automobile for X number of dollars, and he, the Ruckle salesman, could not sell the car that cheaply, and the retail customer said he could get the same service from Ruckle Pontiac whether he bought the car from he, the Ruckle salesman, or from Turco, the Nabcor dealer.

Q How did you respond to that salesman? What did you say to him?

A I told him, No. 1, Turco could not get the car so he did not have to worry about losing the deal. We never delivered any cars to Turco and never delivered any cars after that, so far as I can recall.

Q Did you discuss this with Mr. Dillon or did Mr. Dillon come to you?

A He would have discussed that with me because it interfered with his retail department.

Q What did he tell you?

A Under no circumstances deliver any more cars to Nabcor.

Q Was there any discussion with Frank Maiorana about a letter or an insurance or anything like that?

A I don't recall whether that came at that time or not. Thinking back -- and I may be a little fuzzy on this -- I don't think it was the first time it happened. I think at one of those times when it did happen it was the thing that activated the letter from Mr. Maiorana to me.

Q What were the times this happened?

A I don't recall.

Q Search your recollection and tell us what you remember about any other instances that that happened.

A I don't recall. I don't recall.

Q What did you respond to Mr. Dillon's direction this time?

A I told him at that particular point in time I had no alternative but to quit selling him. He just ordered me expresslly: don't sell them any more cars, period.

Q Did he give you an order the first time or was that something less than an order?

A I don't think it was less than an order.

THE COURT: We will take a short recess now.

(Recess.)

T5

Q Mr. Stewart, I would like to show you Exhibit 74-A in evidence, a letter from the Greater New York, Long Island and Westchester Automobile Dealers Association. Have you seen that before?

A I don't recall, not being a member, you know.

Q Do you ever see any communications from the Greater New York Automobile Dealers Association?

A You wouldn't have any reason to look at this.

Q On Defendants' Exhibit B-7 in evidence, the orders placed from Nabcor, placed by Ruckle with General Motors with a limited exception bore the designation "Fleet" on the order of October 5, 1967, which is three entries from the bottom on the first page of Exhibit B-7.

And subsequent to that, the orders beginning on October 13, 1966, have the indication "Sold" with a single exception.

Did Mr. Gray tell you to change the method of from fleet to sold?

A I have no recollection.

Q Did you speak with anyone concerning the changing of the method of ordering the Nabcor automobiles?

A I have no recollection.

Q Was Mr. Grimm working on these orders for Nabcor at any time during the course of the orders that are described on Exhibit B-7, going through January 31, 1967?

A I would presume.

Q Did he take over for your activities at any one point?

A No. My Grimm was my assistant.

MR. PERSON: I have compiled, your Honor, a list, Exhibit 631 for identification. It is a list of persons who have signed the order forms and this is for the limited purpose of offering that evidence on the second page, Column 1.

THE COURT: Let me see.

(Handed to Court.)

MR. PERSON: Column i on both pages, but beginning on the second page.

THE COURT: Wait a minute. Is this something that you have shown to General Motors counsel before?

MR. KAPLAN: No.

MR. PERSON: No, I haven't.

THE COURT: Does this have the same information as Exhibit B-7 with some additional columns or what is it?

MR. PERSON: I have added a column, particularly Column i, to show the name of the person who signed the order form that went to General Motors.

THE COURT: Is there anything else added to Exhibit B-7?

MR. PERSON: There is, but I am not at this time seeking --

THE COURT: Are you introducing the exhibit at the moment?

MR. PERSON: Only for the limited purpose of Column i and the date of the Ruckle order, which would be Column E.

THE COURT: That is a little bit clumsy to introduce an exhibit just for that. Why don't you try to use it with the witness and ask him some questions, would you?

BY MR. PERSON:

Q Mr. Stewart, do you recall signing any of the order forms that went in to General Motors for Nabcor automobiles?

A You do have copies of the orders, right?

Q I do.

A Presumably they have my signature.

Q Was Mr. Grimm also signing Nabcor orders?

A Yes.

Q Did you have any conversations with Mr. Grimm concerning the Nabcor orders?

A In what regard?

Q In any respect at all. Did you talk with Mr. Grimm about the Nabcor orders?

A I would presume that we may have. That would be a normal process of working together.

Q Do you recall talking with Mr. Grimm about any problems you were having with Nabcor?

A Not particularly. He was privy to all conversations. It is only a two-man office.

Q Was he there when Mr. Dillon talked about having no more dealings with Nabcor?

A I don't recall.

Q As soon as Mr. Dillon told you to stop working with Nabcor you did so right away. Then you say there were two conversations actually, correct?

A I would presume that was the latter of the two would be more correct. Meaning when I stopped doing business?

Q Yes.

A Yes.

Q You had two conversations with Mr. Dillon?

A Right.

Q Do you recall --

THE COURT: Look, the jurors are not hearing you. You have to face them and you have your hand up to your mouth, and I want you to speak out so everybody can hear and let's concentrate on making everybody hear and not be concentrating on anything else.

Q Do you recall when the second conversation with Dillon took place, approximately?

A No, I don't.

Q Can you place it in terms of any action that you took with respect to Nabcor?

A No.

Q Do you recall taking any action at all after talking with Mr. Dillon at any time?

A I don't follow your question.

Q Do you recall having taken any action at all with respect to Nabcor after and as a result of talking with Mr. Dillon?

A Yes, the second time when we had that problem that I referred to just before we recessed, that is when we quit doing business with them.

Q You believe that the problem was described in Exhibit 547 in evidence, the letter dated March 10, 1967? I believe you testified that the problem described in that letter came before the problem with Turco which ultimately came after?

A I would not have testified to this.

THE COURT: Let me hear the question again.

(Record read.)

THE COURT: Strike the question. You rephrase it, it is too confusing.

Q Can you recall in relation to this letter dated March 10, 1967, when the problem with Turco developed which, according to your testimony, resulted in no longer dealing with Nabcor?

A No. I have no indication timewise.

Q Could it have been after?

A It could have been anything.

Q It could have been after, before or after?

A I don't recall.

Q Was the incident that took place before, where you were continuing to take orders from Nabcor?

MR. KAPLAN: Objection.

THE COURT: Overruled.

Q Were you continuing to take orders from Nabcor after the incident which resulted in the decision not to deal with Nabcor?

A The only thing that I am looking at here, counsellor, is the letter of March 10, 1967. Apparently it has, according to your compilation here, the last automobile thatwas delivered was March 20. We had invoiced a car the same day that the letter was written.

Q The letter is March 10.

A But this would have been the last car. So possibly, according to the letter here, this was the time that our relationship with Nabcor came to a halt.

Q In other words, there was nothing prior to this incident that caused you to stop your activities with Nabcor, isthat correct?

A Nothing prior?

Q Yes, nothing at all before this incident described in the letter dated March 10, Exhibit 547, which caused you to change your method of dealing with Nabcor, is that correct?

A I don't understand your question.

Q Was it the incident with respect to Turco about which you had a conversation with Mr. Dillon which resulted, you say, in no longer dealing with Nabcor, was that the reason that you stopped having dealings with Nabcor?

A Right.

2

Q At any time prior to that incident did you do anything with respect to Nabcor's relationship with Ruckle to change it in any way?

A I don't recall anything specifically.

Q Was the incident involving Turco of great significance to your firm?

A This particular point in time it wasn't, no.

Q Why did it result in what you say is an unwillingness to deal with Narcor any longer?

A His volume had disappeared. He only had one delivery in the month of February, so there wasn't any more volume.

As far as we were concerned, it was entering into a troublesome account. Why create problems with my retail sales department with one or two cars a month?

Q Are you recalling this or using this Exhibit B-7 to refresh your recollection?

A I am using this to refresh my recollection.

Q Supposing I told you that Ruckle Pontiac during the same period had nine orders from Narcor sitting in the fleet department?

MR. KAPLAN: If you told him that, I would object. There is no foundation for that.

THE COURT: Let's get the nine orders.

Q Would you please take a look at these orders, Exhibit 472, and consecutive numbers in evidence?

A These were the orders that were sent back?

Q These were the orders that we have testimony were sent back.

A Okay.

Q Do you see the date of each order? It is dated in February, 1967, isn't that correct?

A That is correct.

Q Why is it on March 10 or earlier, Exhibit 547, the date of the letter, that Ruckle Pontiac decided to no longer do business with Nabcor?

A I don't know.

Q Isn't it true --

THE COURT: Can I have the last question and answer?

(Record read.)

Q I show you Exhibit 471 in evidence, the letter to Mr. Norman Weinberg, from Walter Gray, of March 20, 1967. And was this the date at which Nabcor was informed that Ruckle would no longer do business with it?

A It could have been. It would indicate that was the case.

Q If that is true, then any orders that you received from Nabcor prior to the date you decided not to do business would have been placed with the factory?

A Probably correct.

Q Do you know if these orders had been placed with the factory, these nine orders?

A I would have no recollection.

Q Do you recall having cancelled any orders after these nine orders were returned to you?

A No, that happens with such frequency in my office you wouldn't remember anything like that.

Q Nine automobiles?

A Of course.

Q What is the total value of nine automobiles wholesale to you?

MR. KAPLAN: Objection.

THE COURT: Overruled.

A I have no means of defining that.

Q $4000 per car?

A No. Talking about profit over cost?

Q Cost of the automobile to Ruckle.

A The cost of an automobile is a nebulous figure.

Q Were you asked by anybody to review documents for the purpose of this lawsuit, to try to find documents as related to the lawsuit?

A I recall having a meeting a couple of years ago, I guess.

Q Did you assist in the location of documents for production in this lawsuit?

A I don't know whether I did it myself or one of the people from my office.

I presume some of the people from my office would have followed my instructions and given Mr. Dillon all the papers pertinent to that question.

Q Did you give instructions to find any orders to General Motors that related to these nine Nabcor orders?

A Our attorney was instructing us to give everything pertinent to the account, which we did.

Q You are not aware of any orders, is that your testimony?

A I can't testify of any orders to GM and I am not testifying there were and I am not testifying there weren't. I am telling you I don't recall.

Q Is that the reason you have for having waited from approximately seven days after February 3, 1967, the date of the first of these orders, to the date of March 20, 1967, before sending the orders back to Nabcor?

MR. KAPLAN: I object to that. There is no foundation whatever that these orders to Ruckle were before March. The fact that Nabcor dated it February proves nothing.

THE COURT: When were these received?

THE WITNESS: I have no idea.

THE COURT: Did they have any stamp or anything, Mr. Person?

MR. PERSON: They do not appear to have any stamp.

THE WITNESS: As I recall, I think we date-stamped orders we received.

BY MR. PERSON:

Q Defendants' B-7 gives a date on the first line, the date of Nabcor order, March 28, 2966, date of Ruckle order from GM three days hence. The next one April 12, '66, and the Ruckle order to GM four days later.

I believe if you look at the list you will find that all of Nabcor's orders were placed within several days after the date of the Nabcor order.

A I've seen the list.

Q Isn't that your procedure to place orders with the factory as soon as an order is received as your department can?

A Yes.

Q And if these orders had been received

by Ruckle within a day or so after the date thereof, that these orders would have been submitted to the factory unless a decision had been made already not to do business with Nabcor?

A True.

Q Have you ever lost any other fleet accounts by reason of the purchaser not being able to get a GM fleet certificate?

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q Has Ruckle ever ceased doing business with a company that applied for a fleet certificate from GM and found it could not obtain one?

A I would not have any knowledge of that.

Q When you negotiate a price do you take into account volume?

A Always.

Q If Nabcor volume was less than expected is there any business way of dealing with that problem?

A Yes. You renegotiate.

Q Did you attempt to renegotiate at any time?

A I don't recall at this point in time.

Q You are talking about price, correct?

A Talking about price.

Q You did not attempt to renegotiate?

A I said I didn't recall.

Q Have you told us everything you can recall about your conversation with Mr. Dillon concerning his announced reason for not doing any more business with Nabcor?

A I don't think we have left anything out.

Q Was there anything mentioned about a Mr. McNamara?

A To whom?

Q To you.

A No. The first time I heard about that was Friday.

Q The first time?

A As I recall.

Q You don't recall --

A I was not part of that conversation. Mr. Dillon testified that that was a social occasion at his house. There would have been no --

BY THE COURT:

Q It is not a matter of whether there was any reason?

A I was not privy to the conversation.

Q Did he say he had spoken to anyone at General Motors?

A Not that I can recall.

Q Did he say that someone at General Motors had asked him what Nabcor was because a relative was interested in buying a franchise?

A There is a possibility but there, again, it is conjecture. I have no recollection.

BY MR. PERSON:

Q Do you recall at any time talking with Frank Maiorana and advising him that Ruckle Pontiac was selling automobiles to doctors?

A I think I told him that.

Q Do you recall when that occurred?

A I would presume it occurred reasonably close to the inception of our business arrangement.

Q Back in March of '66.

A Probably back in March of '66.

Q Did you say at that time or at any time that Ruckle Pontiac was having trouble with General Motors regarding that business?

A That Ruckle Pontiac was having trouble with General Motors?

Q Concerning the doctor automobile brokerage business.

A Never had any trouble with anyone from the doctors program.

THE COURT: Did you ever tell Mr. Maiorna that you were having any such trouble? That's the question.

A Not that I can recall.

Q When did you go into the doctor business?

A I set that program up for -- I initiated a meeting on that in December of 1965. It would have been several weeks after that that we started doing business with them.

Q What was the name of the one agency that you dealt with that you testified about on Friday concerning selling cars to doctors?

A That was the National Association of Residents and Interns.

Q Located where?

A I believe they were located on 42nd Street.

Q Was it related in any way to the National Association of Fleet Administrators, also located on 42nd Street.

A None whatsoever. Totally different.

Q How many meetings of the NAFA, National Association of Fleet Administrators, have you attended over the past years since 1965, approximately?

A I have no idea.

Q Many?

A Many.

Q Have you met any of the Pontiac zone officials at those meetings?

A Yes.

Q Are they customarily at the meetings?

A No.

Q When can you recall that they went to any such meetings?

A They could be more likely to go with the inception of a new model.

Q Do you recall having visited Mr. Maiorana at the inception of Nabcor to see the new models back in 1966?

A Quite possible.

Q What month was that?

A October. That's the month the new models come out.

Q Isn't October the date at which the

designations of Nabcor orders to the factory changed from fleet to stock? May I refresh your memory with Exhibit B-7?

MR. KAPLAN: Fleet to sold.

MR. PERSON: I'm sorry.

Q Fleet to sold.

A What was your question?

Q Isn't it true that in October of 1966 the method of Ruckle's ordering from the factory for Nabcor orders changed from fleet to sold? Look at teh schedule.

A It shows that

Q Any reason to disbelieve that?

A No.

A I agree with it.

Q Do you recall having talked with any persons from the Pontiac zone during the meeting in October of 1966, a NAFA meeting?

A I do business with these people every day of the week. I am in communication with these people every day of the week.

Q Do you recall ever having talked with anyone other than what you have testified to already today about Nabcor, that is, anyone from the Pontiac zone?

A I have no recollection other than my testimony already given.

Q Do you recall having told Frank Maiorana that according to you General Motors told you not to continue with the doctor business?

A Told me not to continue with my doctor business?

Q Can you recall havins said that at all to Mr. Maiorana?

A No.

Q What time did you discontinue the business? What period of time? What date?

A I believe that it might have been some time in 1967.

Q Did it taper off at any time?

A This was a mutual agreement.

Q Was it in early '67?

A I don't recall what peirod of '67 it was.

Q Could it have been March 10, 1967?

A I have no recollection.

Q Did you advise Mr. Maiorana that the doctor business was going very well until you were told to stop it by General Motors?

A General Motors has never told me to stop doing business with anyone.

Q Do you recall introducing Frank Maiorana to Walter Gray at the NAFA meeting in 1966, October?

A It's possible.

Q To a W. P. Holzworth?

A It's possible.

Q Who was he?

A I believe he was the New York zone manager for Pontiac Motor Car Division.

Q And who was Mr. McNamara, by the way?

A Mr. McNamara is employed by the General Motors Corporation.

Q Where?

A When?

Q Back in '66-67.

A I don't know. He could have been either in the Newark zone or in the New York zone.

MR. KAPLAN: I move to strike. If he knows, that's fine, but if he doesn't know --

A I have no knowledge, really.

THE COURT: Motion granted.

Q Did you ever have any transactions between Ruckle Pontiac and General Motors through Mr. McNamara in '66 or '67?

A Transactions?

Q Did you have any dealings with GM through Mr. McNamara?

A I would not have any reason to have any business dealings with McNamara.

Q Do you recall introducing Mr. Eckart to Frank Maiorana or vice versa?

A Who is Mr. Eckart.

Q W. T. Eckart, assistant zone manager of the New York Pontiac zone.

A I don't recall the individual.

Q Tom McMahon?

A I recall him.

Q Do you recall introducing Frank Maiorana to Tom McMahon?

A It's possible.

MR. KAPLAN: I move to strike that. I've tried to be quiet about it. If the witness knows --

THE COURT: Possibilities are no help.

Q Do you recall that any of those persons patted Frank Maiorana on the back during the period that the NAFA meeting was being held, saying "Sell a lot of cars, Frank"?

A I have no recollection of that.

Q Or having one of them give Mr. Maiorana a gold labeled pin which had a number 3 on the pin?

A I have no recollection of that.

Q Do you recall any pins having been given out in 1966, October?

A I have no recollection of that.

Q Do you recall talking with anyone at Nabcor concerning the return or the anticipated return of the nine orders?

A No, I don't recall that at all.

Q Do you recall going over to Nabcor's office at the Westchester Town House and telling Frank Maiorana that Robert Dillon had told you, Mr. Stewart, not to sell Nabcor any more cars?

A That's possible.

Q Do you recall whether --

THE COURT: Now, look --

A I don't have a recollection, your Honor.

THE COURT: You don't have a recollection of any of this, is that right?

THE WITNESS: Not really.

THE COURT: Something that's possible is not evidence, but I just don't know, when you say it's possible, if you are having some recollection or if it is just a figure of speech of yours.

THE WITNESS: It's more of a figure of speech.

THE COURT: Do you have a memory of that?

THE WITNESS: I do not.

Q Was this an important event, this no longer being willing to sell cars to Nabcor? Did it make an impression on your mind?

A I don't recall at the moment.

Q Do you recall whether you stated to Frank Maiorana at any meeting during this period that Mr. Dillon told you not to sell cars to Nabcor any more because General Motors dealers were complaining to the factory?

A I have no recollection of that conversation.

Q Have you ever heard of any General

Motors dealers complaining to anyone about Nabcor?

A No.

Q You didn't hear of any dealers in the Automobile Dealers Association discussing this?

A I didn't know other dealers that were selling to Nabcor.

Q Did you state to Mr. Maiorana that you had been told that the cars being sold to Ruckle for Nabcor were going all over the country?

A I have no recollection of that.

Q Do you recall whether you told Mr. Maioran that Mr. Dillon of Ruckle Pontiac had told you that he wanted a letter from Nabcor about not selling Pontiacs at unreasonably low prices?

A I have no recollection.

Q Do you recall having told Mr. Maiorana whether Mr. Dillon had told you that the GM official had told Mr. Dillon not to sell cars to Nabcor because of these dealer complaints?

A I have no recollection of that conversation.

Q Or that the factory was getting heat from the dealers?

A I have no recollection of that.

Q And, finally, do you recall whether you said to Mr. Maiorana that a high factory official was at Mr. Dillon's home at the weekend?

A I have no recollection of that.

Q Do you recall any discussions at all concerning any official visiting Mr. Dillon's home during the weekend?

A Not particularly.

Q Exhibit 634?

THE COURT: Are you offering it?

MR. KAPLAN: I object. What does it mean.

THE COURT: Ask the witness what it is.

Q This is Exhibit 634 for identification. Tell me what this form is?

A This is a purchase order.

Q To whom?

A This would be to an automobile dealer.

Q To any type of automobile dealer?

A This is a form purchase order that we had made out and any one of the three different blocks there would have been crossed out where applicable. If we were buying a car through any one of those different organizations --

Q One block is Ruckle Pontiac Company, Inc.?

A Yes.

Q What about Ruckle Fleet Purchase Associates, what was that?

A That was nothing more than a name. It was not a corporation or anything like that. We used that to distinguish from our regular, normal fleet business.

Q What type of business were you attempting to include within the Ruckle Fleet Purchase Associates?

A Primarily this had to do with the doctors and also had to do with another organization that we handled all of their purchasing of vehicles for their individuals throughout the United States.

Q Was there any use of a fleet certificate here?

A In what regard?

Q Were you ever called upon to state whether you had a fleet certificate in ordering any cars?

A I don't recall.

MR. PERSON: No further questions.

RECROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Stewart, on direct this morning, in response to a question from his Honor, you said that in order to get cars from a fleet allocation it was necessary for the purchaser to have a fleet certificate. Do you recall that?

A If I said it, I said it.

Q Is that the case, or was it the case in 1966 and 1967?

A Not really.

THE COURT: Let's get back. I want the reporter to find that testimony.

(The jury left the courtroom.)

THE COURT: I feel it my duty to warn you, Mr. Stewart, you are testifying here under oath and I warn everybody else in this courtroom who is going to take this witness stand that, although it does not often happen, where there are clear cases of false testimony the penalty is indictment and conviction for the crime of perjury. I warn you that. You better consider that and every other witness consider that. That is not a joke.

(Recess.)

T7

(Jury present.)

THE COURT: We have the tape of the testimony that I think Mr. Kaplan was referring to. There was one question and the reporter read this to me during the recess, and he will read that now, a question by me.

That I was told was interrupted, and we will have that read and then that other question. This was this morning.

(The record was read as follows:

"By The Court:

"Q Was there a requirement of General Motors that he had to have a fleet certificate in order for you to do business?

"A Not necessarily.")

THE COURT: I want to state here that the witness apparently thought I was finished. I didn't mean to end the question. I remember that we were going along quite quickly. I didn't intend to end the question with the words "do business," I wanted to go on and say, "by fleet orders."

But, anyway, that question and answer was this morning, and then we had at a later point another question of the same nature.

(The record was read as follows:

"Q You asked if I followed you. In a sense I don't. I would just ask you this: in order for you to get cars from the fleet allocation, did the purchaser have to have a fleet certificate?

"A Yes, sir.")

THE COURT: Now, would you read the questions and answers that Mr. Kaplan started just before we recessed?

(The record was read as follows:

"By Mr. Kaplan:

"Q Mr. Stewart, on direct examination this morning in response to the question from his Honor, you said that in order to get cars from a fleet allocation it was necessary for the purchaser to have a fleet certificate. Do you recall that?

"A If I said it, I said it.

"Q Is that the case or was it the case in 1966 and 1967?

"A Not really.")

THE COURT: I should also call your attention, Mr. Stewart,to the testimony you gave Friday, page 828:

"Q Do you know what a fleet certificate does for a holder of it?

"A Not really."

Then on page 830 and 831:

"Q Do you know why these were submitted as orders, fleet orders to the factory?

"A A little earlier in my testimony I said I didn't think it made much difference on factory orders whether you have 'sold,' 'fleet,' et cetera."

I think those are at least some of the relevant portions of the record.

Mr. Kaplan.

MR. KAPLAN: May I have my last question and answer read back?

(Record read.)

THE COURT: Which is correct?

THE WITNESS: Well, I think that you have to be aware that there are certain circumstances where you have to have a fleet certificate number when you are requesting a specific number of automobiles.

For instance, in my dealing with some of the Rent-A-Car companies where they are negotiating with me for 15 or 16 hundred automobiles, for delivery of those automobiles, it has to be set up months in advance.

That is when a fleet certificate or a fleet owner of automobiles does have some bearing on the capability of delivering the automobiles.

In dealing with smaller accounts it is not necessary. See, this type of business is a very small part of our business, so it is difficult to be specific.

BY MR. KAPLAN:

Q Mr. Stewart, apart from circumstances where you are trying to get 15 or 16 hundred automobiles for delivery to Rent-A-Car companies, did you ever need a fleet certificate to cars from General Motors?

A Did I?

Q Yes, sir.

A No.

Q During what period of time has it been true that you have to have a fleet certificate number in order to get delivery of cars in that volume in that manner?

A Well, I am not sure how long.

Q Was it true in 1966 or in 1967?

A I am not --

THE COURT: Could I get that again.

(Record read.)

THE WITNESS: I don't have a recollection whether it was or not.

Q In the circumstances where you say it is necessary to have a fleet certificate number to deliver large volumes of cars to rental companies and the like, those cars are delivered to locations other than a General Motors dealership, is that true?

A It can be and in some cases it may not have been.

Q Have you ever dealt with a case where it was not so?

A Yes.

Q In that instance was there one such instance or more than one such instance?

A There was more than one such instance.

Q Who were the fleet customers involved in those circumstances?

A By name?

Q Yes, sir.

A One would have been McCollough Leasing. Another account would be National Car Rental. Those are the two that I recall specifically.

Q Let's start with McCollough. In that transaction how many cars were involved?

A Well, with us, as I recall, roughly about three or four hundred cars. Perhaps I am not sure of the number.

Q When did that transaction take place?

A I have a contract with them. It goes on into perpetuity, you may say.

Q Did anybody from General Motors ask you in connection with the McCollough transaction for a fleet certificate number?

A No, sir.

Q So it is your assumption that you needed a fleet certificate number in order to make that transaction, true?

A I think -- could I ask the question another way?

Q Answer that one first, and then if you want to explain it, go ahead.

A I am not sure.

Q You are not sure?

MR. KAPLAN: May I have the last question and answer read back?

(Record read.)

Q Mr. Stewart, did somebody at General Motors tell you you need a fleet certificate to make that transaction with McCollough or not?

A No. I don't know what their certificate number is.

Q Let us talk about the National Car Rental transaction. When did that take place?

A I forget what year I started doing business with them, but around 1966 or 1967, 1968, somewhere in there.

Q Did anybody from General Motors ever ask you for their fleet certificate number before you sold them cars?

A No, sir.

Q You occasionally engage in drop-shipments, is that right?

A Yes, sir.

Q On occasion you arrange to drop-ship cars to rental companies and leasing companies, true?

A True.

Q On some of those occasions you arrange for cars delivered to the rental company's premises rather than at the premises of a dealer, is that true?

A True.

Q Since 1969 it has been necessary to obtain prior approval of General Motors in order to have cars delivered directly to accounts rather than to a dealer, true?

A I can't answer that. I wouldn't have knowledge.

THE COURT: Before we get too far, is it your testimony now that for the type of transaction contemplated with Mr. Maiorana and Nabcor back in March, 1966, a fleet certificate was not required?

THE WITNESS: No, sir.

THE COURT: What do you mean "No, sir"?

THE WITNESS: A fleet certificate was not r-quired.

THE COURT: A fleet certificate was not required for the type of transaction contemplated with Nabcor?

THE WITNESS: No.

THE COURT: Would you recall whether or not you told Mr. Maiorana that a fleet certificate number was required for that contemplated transaction?

THE WITNESS: I don't recall, your Honor, whether it was Mr. Maiorana who asked that or myself.

BY MR. KAPLAN:

Q Did you tell Mr. Maiorana that the fleet certificate was required?

A I don't recall.

2 Q Isn't it a fact, sir, that in the first meeting you had with Maiorana at the Town House you agreed to sell him automobiles?

A True.

Q You agreed at that time when you knew he had no fleet certificate, true?

A True.

Q You kept dealing with him for the next year and through the whole period of time and he had no fleet certificate?

A True.

Q You didn't change the price when you found out he hasn't even got a fleet certificate?

A True.

Q In the veryfirst conversation with Maiorana it was Maiorana who brought up the subject of the fleet certificate?

A True.

Q Did he tell you he wanted a fleet certificate?

A True.

Q It didn't make any difference to you one way or the other whether he had one?

A True.

Q But you used your offices with Pontiac to see Mr. Gray about getting one for them?

A That is right.

Q When he didn't get one you didn't raise the price, true?

A It didn't make any difference.

Q You had no difficulty getting cars from General Motors for Nabcor?

A No.

Q Nobody told you not to sell to them?

A True.

Q Nobody told you they didn't have a fleet certificate and you couldn't deal with them on any particucular basis, true?

A True.

Q I think you said also in response to a question by his Honor this morning that when you turned in the orders to General Motors which were labeled fleet, you identified the customer's order, the fleet number. Was that so?

A That couldn't have been incorrect, because we didn't have a listing of the fleet numbers unless a customer gave us his fleet number, which they could do on occasion.

Q In point of fact, sir, General Motors never asked you for the fleet number for a customer on an order form, did it?

A That is true.

Q You had never on factory orders identified the name of the person for whom you were ordering the car?

A I beg your pardon? I couldn't hear you.

MR. KAPLAN: I withdraw the question.

Q In point of fact, sir, on these Nabcor orders listed on Defendants' Exhibit B-7, which I think the jury still has and you still have, Nabcor's name appeared on the order, true?

A I believe they did.

Q You got all those cars from General Motors?

A True.

Q After the orders started being marked "Sold" in October, 1966, you continued to get orders?

A True.

Q The time between Ruckle's order from General Motors and the General Motors delivery to Ruckle, there was no difference in the time interval?

A No.

Q Nobody at General Motors ever questioned you about who you were marking these orders "Fleet" for or not, true?

A That is true.

Q You were asked whether you introduced Maiorana to the gentleman from Pontiac by the name of Holzworth and you said it was possible. Do you remember having done so?

A I don't recall that specific instance.

Q You were asked whether you had introduced Mr. Maiorana to Walter Gray at a meeting of the NAFA in October, 1966, and you said it was possible. Do you recall having done so?

A No.

Q Mr. Stewart, I believe you mentioned on Friday that at one point in your relationship to Nabcor Mr. Maiorana offered you a job, is that right?

A Correct.

Q Was that after or before Mr. Dillon told you for the first time to stop selling to Nabcor?

A I don't recall. I don't recall the exact date.

Q Didn't Maiorana offer you a job and tell you the reason was to keep you selling cars to Nabcor after

Dillon told you not to sell?

A I don't recall..

MR. KAPLAN: I have no further questions.

REDIRECT EXAMINATION
BY MR. PERSON:

Q You told us what you understood about the fleet certificate. Have you told us fully what you understand about the fleet certificate in terms of whether it is required or not?

A I have tried to answer all the questions to the best of my ability.

Q Do you know of any instances where Ruckle Pontiac or any of its affiliated companies was required to have a fleet certificate in order to get automobiles?

A I don't remember specific instances, no.

Q Do you recall -- were you in the courtroom when Mr. Dillon testified that with respect to Cadillacs that he was informed from time to time Ruckle needed a fleet certificate, do you remember that?

MR. KAPLAN: I object to the characterization because Dillon said someone told him that.

THE COURT: Read that question, please.

(Question read.)

MR. KAPLAN: Objection.

THE COURT: Sustained.

Mr. Kaplan, you are saying it is a mischaracterization?

MR. KAPLAN: Something of a mischaracterization.

THE COURT: What was testified to?

MR. KAPLAN: If I recall correctly, it was Friday that Dillon on occasion had a Cadillac dealer ask him whether he had a fleet certificate where Dillon was trying to buy cars.

THE COURT: That's right. Just reframe the question, if you want to.

Q Do you recall a dealer asked Ruckle or you for a fleet certificate before engaging in business with you?

A I don't have a specific recollection.

Q Have you ever talked about this with Mr. Dillon?

A No.

Q Have you ever asked any persons whether they had a fleet certificate?

A I didn't have to. I had the publication.

Q Is that this list?

A The list that we had in evidence on Friday.

Q Did you believe that that was the equivalent to a fleet certificate?

THE COURT: Sustained.

Q In what connection did this list -- in other words, what was your understanding that being on the list entitled a person to do?

MR. KAPLAN: Objection. It says so precisely, it is on the list.

THE COURT: Yes, I know. I will sustain the objection.

Q Was it your understanding that persons who were on this list, Exhibit 626 -- you are looking at Mr. Kaplan --

MR. KAPLAN: I am standing because I am going to object to his understanding of what it is.

Q Did you at Ruckle believe that in order to make a fleet sale through a fleet allotment that the company had to be in that National Account List?

MR. KAPLAN: Objection. If you want to ask him whether General Motors told him that, I have no problem.

THE COURT: I think at this point we have a lot of question about his belief, and I will allow it. Let's have the question read back.

(Question read.)

MR. KAPLAN: I have a further objection because I don't think that what a fleet sale is very clear at this point.

THE COURT: No, it isn't.

Q Did you believe in order to be able to obtain a fleet allotment in order to cover an order by a customer, that the customer had to be in the National Account List?

A I never had to secure a fleet allotment. The account always secured his own fleet allotment from the corporation and the fleet accounts, as I testified earlier, they were set up at the factory in a normal method of allocating automobiles.

Q Did a fleet account then advise you that it had an allotment from the factory?

A Fleets may have.

Q If the fleet account did not have it, what would you do?

A Still make up the orders and send them in to the factory.

Q Send them in as fleet?

A Whichever, some sold and some marked fleet sometimes. We never had any trouble getting cars.

Q Do you know a William Nash?

A William Nash?

Q Bill Nash.

A I have no means of identification.

Q Do you ever recall being at a meeting with Frank Maiorana and another person, at which time you said that a high factory official met with Mr. Dillon and instructed Mr. Dillon not to sell any more cars to Nabcor?

MR. KAPLAN: I think we had this 12 times this morning.

THE COURT: I don't think so.

Do you remember any such occasion?

THE WITNESS: No. I don't know who Nash is.

MR. PERSON: I have no further questions.

MR. KAPLAN: One or two your Honor.

RECROSS EXAMINATION

BY MR. KAPLAN:

Q You said, Mr. Stewart, there is a publication that listed people who had a fleet certificate, true?

A Yes.

Q Is this the publication, Plaintiffs' Exhibit 626. to which you referred?

A Yes, that is a list of the fleet owners.

Q You looked at it? It doesn't list people who had fleet certificates at all, does it?

A No.

Q This lists people who are eligible to get the fleet allowance in the year 1970?

A True.

Q That is different from a fleet certificate?

A Right.

Q You have to have 20 or more cars registered to get a fleet certificate?

A You may have had to have -- maybe 10 or more.

MR. KAPLAN: May I read this inside cover to the jury?

(Portion of exhibit read.)

Q You in fact have never participated in allocating automobiles for General Motors?

A No, sir.

Q Whatever you have said or known about how General Motors allocates automobiles in fleet accounts or retail accounts is all hearsay, isn't it?

A Exactly.

MR. KAPLAN: No further questions.

BY MR. PERSON:

Q It was your understanding, isn't it correct, that in order to be able to sell a large number of automobiles to a company that it has to qualify with the appropriate number of registrations?

A I don't think I followed your question.

Q In order for Ruckle tobe able to sell a large number of automobiles to a company is it necessary for this company to have the appropriate number of vehicles registered in its name?

A No.

MR. PERSON: No further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: We will recess until 2.15 p.m.

(Luncheon recess to 2.15 p.m.)

cerning fleet accounts?

A I would say I did, yes.

Q Do you recall whether you communicated with Mr. Gray concerning Nabcor?

A No, sir, I do not.

Q Do you know if Ruckle Pontiac requested Mr. Gray to consider a fleet certificate applicationfor Nabcor?

A Only by what I heard here today.

THE COURT: Who was Gray again?

THE WITNESS: He was the fleet representstive of Pontiac Motor Division at the time, I think.

Q Defendants' Exhibit B-7 has been admitted in evidence. It describes various transactions that Nabcor had with Ruckle Pontiac. The first transaction in September is 9/30/66 and it's indicated as a fleet transaction. The "Yes" means that Nabcor's name was on the order form.

Do you recall if anyone at General Motors had inquired as to whether Nabcor was a fleet account or not?

A No, sir.

Q Do you recall whether you made out

any of these orders yourself?

A I assume I did. I don't recall particulars or specifics.

Q I would like to show you Plaintiffs' Exhibit 472 and consecutive exhibits, Nabcor orders, and see --

THE COURT: Those are the nine orders, the February orders?

MR. PERSON: Yes.

A I don't recall seeing them before.

Q Did you ever see any orders at all from Nabcor?

A I ordered the cars. I don't recall specifically seeing the oeders, no.

Q Could you order a car without seeing an order?

A I could not.

Q How soon after an order arrived in the fleet department at Ruckle did you order the car from GM usually?

A We attempted to do it on a daily basis.

T2

Q Is there any indication that is made on an order form to show whether or not a car had been ordered?

A On an order form?

Q Yes, when the customer submits an order to Ruckle Pontiac, the fleet department, was there any method of marking an order to show that somebody had ordered?

A Not necessarily. Attach a copy of the customer's order, that would be an indication.

Q Were you familiar with the method of the numbering of orders in the fleet department at Ruckle?

THE COURT: You better stand back, the jury has to hear him. He is talking to you.

Q Were you familiar with the method of numbering orders in the fleet department at Ruckle Pontiac?

A As we received orders if we put numbers on the orders?

Q Yes.

A We kept a number, I do recall, yes.

Q I would like you to look at the order form and see if there is a number on some or all of these order forms, and were they numbered by the fleet department at Ruckle Pontiac?

MR. KAPLAN: Could we have the record reflect exhibit numbers?

MR. PERSON: 472, 475, 476, 472, 471, 470, 467, 479 and 474.

Q It is the number in the upper lefthand corner?

A I would say the number is in the upper lefthand corner and the A,B,C,D.

THE COURT: You just can't stand there and talk to each other, the jury has to hear this.

MR. PERSON: I am going to show this exhibit. The witness pointed out Exhibit 472.

THE COURT: I don't know what he said about it and neither does the jury.

Q Could you please -- there is a No. 475-F in the upper lefthand corner of Exhibit 472?

A Right.

Q Could you please state what that is?

A As I recall that number would be the number we would assign with the A,B,C,D and E, and that would be just showing the continuity of the numbers or more within one group, the 467 group.

Q For what purpose?

A Just our internal control.

THE COURT: Does each one of those exhibits bear such a number?

THE WITNESS: One has E, one C and B and so on.

THE COURT: All right.

MR. KAPLAN: May I ask a question on voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q You recognize these numbers here?

A It looks like my handwriting.

BY MR.PERSON:

Q Now, when would those numbers such as these orders be written by you in the fleet department at Ruckle?

A Upon receipt of the order we put it in the log and keep track of them by that number.

Should we lose one or have to refer to a specific one,we would have that to go back to.

Q Were the letters that are assigned typically assigned to orders received at the same time?

A I would say yes.

Q You will note that Exhibits 472, 480, 475, 476, 472 and 471 have letters all in the 657-A through

F.

Could you please look at these remaining orders, Exhibits 478, 479 and 474, and see if you can find any mark on any of those orders?

A On 478 it is 672-A.

Q Is that in your handwriting?

A I would say so.

Q Would that indicate to you that this 672-A, Exhibit 478, was received at a different time from the other orders that you have numbered and lettered?

A Either at a different time or processed at a different time.

Q I will point out to you that the Exhibit 478 is dated February 20, and that number is higher?

A Right.

Q Than the numbers on the preceding exhibits?

A Right.

Q And that these preceding exhibits are dated from February 3 through February 6 of 1967.

Does that help to refresh your memory at all as to when these orders were received?

A No, sir, it does not.

Q You have orders dated February 23 and February 28, Exhibits 479 and 474, respectively. Apparently there are no order numbers at all applied by you or Ruckle Pontiac, is that correct?

A Could I look at them, please?

I don't see any.

THE COURT: There are nine orders?

MR. PERSON: Nine orders.

THE COURT: How many do have a number?

MR. PERSON: Six have the same number with the different letters, A through E, and they are all dated February 3 and February 6, 1967.

One is dated February 20, Exhibit 478, and has a higher number, 672-A.

THE COURT: And two have no numbers?

MR. PERSON: February 23 and February 28 have no number at all.

Q These exhibits, 477 and 473, do you recall what they are?

A I know what they are, they are postcards to be sent back to an account to confirm receipt of orders.

Q How soon after the order is received, if the order had been ordered from General Motors do you send that confirmation card?

MR. KAPLAN: Objection.

Q What is the objection?

MR. KAPLAN: The question assumes that the cards are sent after the cards are ordered from General Motors as opposed to after the orders are received by the dealer.

THE COURT: All right.

Q Is there any procedure for sending out these confirmation cards? Was there any procedure?

A I don't recall what theprocedure was now.

Q Do you know if the cards would be sent out after the fleet department ordered a car from the factory?

A I don't recall what we were doing at that time.

Q I would like to show you Plaintiffs' Exhibits 470 and 471 in evidence, first of all.

THE COURT: Is that the note or the envelope?

MR. PERSON: The note.

THE COURT: That is what exhibit?

MR. PERSON: 471.

THE COURT: You assume they remember all things, but it would be necessary to tell them what it is.

MR. PERSON: This is a note dated March 20, 1967, with a signature, "Walter," and it says "Attached please find the balance of your order." It is addressed to Norm.

Q Mr. Grimm, can you tell me whether this is in your handwriting?

A That is my handwriting.

Q Do you recall who Norm was?

A I didn't, up until earlier in court.

Q Do you recall now who Norm was?

A Yes.

Q Who was it?

A An employee of Nabcor.

Q Norm Weinberg or Silverstein?

A Whatever name that was mentioned this morning rang a bell.

Q Exhibit 470 is an envelope from Ruckle Pontiac addressed to Nabcor, Attention of Norm, and is dated March 20, 1967.

Could you please take a look at this?

A It is again my handwriting.

Q The whole envelope where it is printed is in your handwriting?

A Yes.

Q It is addressed to Nabcor at Yonkers, New York, Attention Norm. Do you recall having postmarked the envelope yourself?

A No, sir.

THE COURT: He didn't postmark it.

Q Do you recall having sent these nine orders back to Nabcor?

A No, sir, I do not.

2 Q Do you recall having any discussions with anyone at Nabcor concerning the return of these orders?

A No, sir, I do not.

Q Do you recall any communications at all with any persons concerning whether Ruckle Pontiac was willing to continue dealing with Narcor or not?

A No, sir, I don't.

THE COURT: Do you have any memory of the incident at all?

THE WITNESS: Very vague.

THE COURT: What is your vague memory? Give us everything you remember.

A As I said, I remember doing business, Ruckle was doing business with them. We were ordering cars for them and that we terminated the agreement at one point or another. We stopped doing business.

I really don't recall too much beyond that.

THE COURT: What do you recall beyond that?

THE WITNESS: I remember they were located on Spain Road in Yonkers. I remember Frank Maiorana and Norman now came to memory, that is about it.

THE COURT: Do you remember anything about the events or circumstances of ceasing doing business with them?

THE WITNESS: No, sir, I do not.

BY MR. PERSON:

Q About how many cars did the fleet department sell during 1966 over at Ruckle?

A I have no idea.

Q Was the department profitable?

A I have no idea.

Q Were you in a sales capacity at the fleet department?

A Not at that time, no.

Q What was your capacity?

A Assistant to Earl Stewart, and my job was handling the mechanics of making the fleet department work, such as the orders, cards, and follow through the factory, delivering and so on.

Q How many years' experience did you have in any part of that business, ordering cars on a fleet basis?

MR. KAPLAN: I object to that, the fleet basis.

THE COURT: Well --

Q Do you recall the order form for Ruckle Pontiac?

A For Ruckle Pontiac?

Q Yes, where you had a place of indicating fleet, stock or sold on the order form, in the wholesale order form.

A I imagine if I saw a copy I would remember.

Q At Key Chevrolet do you have the same boxes available to be checked?

A No, it is a completely different order form.

Q Did you have any discussions with anyone concerning what box to check over at Ruckle, whether it was to be fleet --

THE COURT: Why don't you show him the form that has the boxes, and I would like to see a form, too. I don't think I have seen it, and maybe the jury would like to see it.

Q This is Exhibit 628 in evidence, Ruckle

Pontiac form. It has the Ruckle name at the top imprinted.

THE COURT: May I see that?

Q There are three boxes, sold, stock and fleet.

THE COURT: Why don't you pass this? I don't think the jury has seen the form.

MR. KAPLAN: I think they have actually.

THE COURT: Have you seen it? All right, I didn't remember.

Q Is this the order form that you were using at Ruckle Pontiac?

A Either this one or one similar.

Q Did the one that you used have the boxes to be checked indicating sold, stock and fleet?

A I believe so.

Q Did you ever have any discussions at Ruckle Pontiac as to the circumstances under which you would check either sold, fleet, when making a wholesale order to the factory?

A The circumstances under which I would?

Q Yes. Any instructions of any kind?

MR. KAPLAN: From whom, if we may?

Q Any kind of instructions, and then we will ask who issued those instructions.

A I would have to say if it was a fleet account, you would check the fleet box, and if it was a sold car you would check the sold car, or if it was stock you check that.

Q Stock, you mean one that nobody was going to buy at retail?

A Right.

Q What do you mean by a fleet account?

A What do I mean?

Q Yes, when you said you would check the word "fleet" if it was a fleet account, is that correct?

A That's right.

THE COURT: What is a fleet account, is that the question?

Q What is a fleet account?

A I can't really -- I don't recall what I considered a fleet account in 1966.

But I would say it would be people ordering a multiple number of cars as far as I was concerned.

Q When they ordered a multiple number of cars, did these orders have to come in at the same time?

A No.

Q That could have been a single car ordered and that would be considered by you a fleet order?

A I would.

Q How would you determine whether a single car order is a fleet order or non-fleet?

A To be honest with you, in 1966 I don't recall how I determined that.

Q Do you know whether or not it made any difference on the form if you checked fleet or sold?

A No, sir.

THE COURT: Can I hear that question, please?

(Record read.)

Q Do you recall any of the fleet accounts that were at Ruckle Pontiac when you were there?

A At that time?

Q Yes.

A It would strictly be a guess on my part as to whether they were in that period of time or later on.

Q Do you remember whether any of these fleet accounts had fleet certificates?

A At that time, no.

Q You don't know whether they had or do you believe they did not have?

A I don't know whether they had. It wouldn't have been a question I would have asked at that time.

Q Were you aware of the fleet certificates at that time?

A I probably was.

Q But were you?

A Yes.

Q What was it that somebody had to go through to obtain a fleet certificate?

A I don't recall the mechanics of it.

Q Do you know any persons who went through the process of obtaining a fleet certificate?

A Since then?

Q At that time in Ruckle.

A No, sir.

Q Do you know whether Ruckle Pontiac had a fleet certificate or not?

A Ruckle Pontiac did not.

Q Did Ruckle Auto Rental?

A Yes.

Q When did it acquire the fleet certificate?

A I don't know.

Q What was the purpose of the fleet certificate?

MR. KAPLAN: I object to that.

Q As far as you know.

THE COURT: Overruled.

Q What was the purpose?

A I don't know what the purpose was at that time.

Q Did you ever order cars for Ruckle Auto Rental?

A Yes.

Q Were you the primary person responsible for ordering cars?

A I would say I probably was.

Q Did you order cars nationwide?

A Yes.

Q Did anyone ever ask you whether you had a fleet certificate?

A Not that I recall.

Q Did you ever volunteer that information?

A Not that I recall.

Q To your knowledge are you familiar that the name Ruckle Auto Rental was listed in the list of fleet accounts?

A I would assume they are.

MR. KAPLAN: Objection.

THE COURT: Sustained, relevance.

Mr. Person, what difference would it make whether Ruckle Auto Leasing was listed?

MR. PERSON: To try to show the use of the fleet certificate by a company that had it.

THE COURT: No.

Q What was the purpose --

THE COURT: He said he didn't know the purpose of the fleet certificate or what it was then.

Q Do you know a Mr. McNamara?

A Yes.

Q Have you ever talked with him?

A Quite a few times.

Q What was his position in 1966, 1967?

A I don't recall exactly what it was. He was in the employ of the Pontiac Motor Division.

Q Was it the zone?

A I knew him when he was in New Jersey and in New York and he was in Washington and is in Washington now and I don't recall exactly where he was.

Q Did he ever visit the premises of Ruckle Pontiac?

A Yes.

Q Many times?

MR. KAPLAN: Objection.

THE COURT: Overruled.

A Not that I recall.

Q Do you recall whether he visited the premises during the time that Nabcor was doing business with Ruckle?

A No, I don't.

Q Do you recall whether you ever spoke with Mr. McNamara concerning Nabcor?

A No.

3 THE COURT: You don't recall?

THE WITNESS: I don't recall talking to Mr. McNamara in reference to Nabcor.

Q Was he superior to Mr. Gray?

A I don't know what his position was at that time, so I can't --

Q Was he a road man?

A I don't know what his position was at that time.

MR. KAPLAN: Objection.

THE COURT: Sustained.

Q What was the name of the representative from the Pontiac zone who maintained contact, frequent contact, with Ruckle Pontiac?

A At that time?

rp Grimm-direct

Q Yes.

A I would have to take a guess and say McMahon.

MR. KAPLAN: Objection.

THE COURT: Sustained.

MR. KAPLAN: I move to strike.

THE COURT: Granted.

MR. PERSON: No further questions.

THE COURT: Cross-examine.

$87:CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Grimm, your period of time at Ruckle, did anybody employed by General Motors say so much as a single word in your presence or to you on the subject of Nabcor?

A Not that I recall.

MR. KAPLAN: No further questions.

THE COURT: You may step down.

(Witness excused.)

THE COURT: Next witness.

T3 pgal

WILLIAM C. LOVELL, called as a witness by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PERSON:

Q What is your address, please?

A 111 Walt Whitman Boulevard, Cherry Hill, New Jersey.

Q What is your present employment?

A Part owner of Rohrer Chevrolet Company.

Q Where is that located?

A Admiral Wilson Boulevard in Camden, New Jersey.

Q How long has that been in business?

A Since 1919.

Q Was there ever a Mr. Rohrer?

A Yes. There still is. He's my inactive business partner.

Q How long have you been with Rohrer Chevrolet?

A Since 1953.

Q What is your title there?

A General manager, executive vice president, and part owner.

Q Do you know a Mr. Speece?

A No, sir.

Q You never knew a Mr. David Speece?

A If I did it does not ring a bell.

Q Did you know a Herb Dunham?

A Yes.

Q What was he back in 1967?

A I believe he was a city manager.

Q What is that?

A I have no idea what a city manager is. He was like maybe second or third from the top.

THE COURT: Of what?

THE WITNESS: From the zone manager. From the head of the zone.

MR. PERSON: Do you have a date, Mr. Kaplan, to stipulate to for the death of Mr. McIntyre?

MR. KAPLAN: It's been agreed that Mr. McIntyre died May, '72, although we were not responsible. We are just agreeing on the dates.

Q Do you know Mr. Courtney?

A No, sir.

Q Of the Philadelphia zone?

A No, sir.

MR. PERSON: The office manager.

THE COURT: Let's get through with this.

(In open court.)

BY MR. PERSON:

Q I have marked for identification Exhibit 642, Chevrolet fleet plan application for basic purchase allowances, dated November 22, 1967, apparently signed by you, Mr. Lovell. Take a look at it, please.

A That's my signature.

Q Is that a copy of an application made to General Motors for a basic purchase allowance on or about the date of November 22, 1967?

A I'm not sure. My fleet manager would make that up and bring it up to me and I would sign it and that's as much as I know.

Q What would happen customarily with the applications after you signed them?

A I have no idea.

Q Do you know if any checks were received from General Motors?

A I don't know.

Q Was there any discussion by you with

prior to coming into this.

Q When did you first go into a General Motors dealership?

A 1953.

Q Have you hqd any communications about Nabcor with any person?

A No, sir.

MR. KAPLAN: In the interests of clarification I think the witness doesn't consider communications with lawyers --

THE COURT: Let's get it more specific. Aside from any communications with lawyers, did you recall any discussions any communications, relating to Nabcor?

THE WITNESS: No, sir.

Q Did you direct any search for documents with respect to your testimony here today?

A I see a letter in here that I had not seen before. It has typewritten my name on it. But I don't recall.

Q Did you direct that a search be conducted?

A The only thing I can say, in various times I keep my office up in front and I have had

CROSS EXAMINATION

BY MR. KAPLAN:

Q Did anybody from General Motors ever say so much as a single word to you on the subject of Nabcor other than the lawyers who visited you?

A No, sir.

Q As far as you know did Rohrer Chevrolet ever refuse to sell a car to Nabcor that Nabcor asked for?

A No, sir.

MR. KAPLAN: No further questions.

$89:REDIRECT EXAMINATION

BY MR. PERSON:

Q You said you never heard of Nabcor?

A I didn't say that.

THE COURT: He did not say that.

Q Did you know that Nabcor was dealing with Rohrer Chevrolet?

A I have learned more about Nabcor today than I have --

Q Did you know that Nabcor had been dealing with Rohrer Chevrolet?

A The stuff that goes by my desk, I saw some orders when it was pulled out the other day

HILDA MADDEN, called as a witness by plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PERSON:

Q Your present residence, please?

A 507 North Wood Avenue, Cherry Hill, New Jersey.

Q You are employed by Rohrer Chevrolet?

A Yes.

Q How long have you been there?

A Since 1967.

Q What month?

A March, I believe.

Q You worked with Mr. McIntyre then?

A I was Mr. McIntyre's secretary.

Q You handled a lot of his paper work?

A Yes, sir.

Q Ordering cars?

A Yes, sir.

Q Did you often type out and sign letters that were in his name?

A All the time.

Q When can you recall having come across differences, Mr. Kaplan.

MR. KAPLAN: Yes, we do.

(Pause.)

Q Do you recall whether these orders were submitted to General Motors, the first orders for Nabcor?

A I can only say the first orders given to me were submitted to GM.

Q Do you recall whether the orders were received, that is, the automobiles were delivered by General Motors to Rohrer?

A All cars I ordered were delivered to Nabcor, yes.

Q How many was that?

A I have no idea.

Q Do you recall whether there were any conversations between the fleet department of Rohrer or any other department of Rohrer and General Motors concerning these orders?

A Not to my knowledge.

Q Do you recall whether or not Rohrer Chevrolet made any applications to General Motors for any kind of fleet benefits with respect to these orders?

MR. KAPLAN: I object to that "benefits." Mr. Person is obviously driving at that other document, an application for fleet allowance. Let's focus on this.

Q Do you recall whether Rohrer Chevrolet made any application to General Motors for any payments with respect to any orders that had been delivered to Nabcor?

A Yes, sir.

Q Did you assist in the preparation of that document by which application was made?

A I did the work myself.

Q I am showing you Exhibit 642?

A Yes, sir.

Q Did you compile that information?

A Yes, I did.

Q Is this your handwriting at the bottom right?

A Yes, it is.

Q Did you take it into Mr. Lovell for signature?

A I used to compile anything he had to sign and lay it on his desk.

MR. PERSON: I offer this in evidence.

MR. KAPLAN: No objection.

THE COURT: Received.

(Plaintiffs' Exhibit 642 was received in evidence.)

xx Q Were you responsible for the application by Rohrer Chevrolet for obtaining a basic purchase allowance for automobiles?

A Do you mean was it my job to fill that paper out?

Q Yes.

A Yes, sir.

Q Was it your job to know when the application should be made to General Motors?

A They never gave me a definite time to have them in. I would send them in maybe every 30 or 40 days.

Q I see that on the application dated November 22, 1967 the vehicles for Nabcor were all delivered in November, 1967. Was that customary to request a basic purchase allowance within the month preceding the application?

MR. KAPLAN: Objection. She testified to the practice. Furthermore, there are other cars for other accounts that were delivered

October 6th.

Q Do you know if Rohrer had any communications with General Motors concerning this particular application for a basic purchase allowance for cars sold to Nabcor?

A I don't understand your question.

T4

Q Did you have any discussions with anyone from General Motors concerning this application for the basic purchase allowance for cars that Rohrer sold?

A Before I sent it in?

Q After.

A After I sent it in? Yes.

Q Who did you talk with?

A Irene Hanlon or Irene Harlon, it is hard to remember now.

Q Did she call you?

A No, sir, I called her.

Q Why did you call her?

A Because our comptroller told me how much he had collected in checks for the rebate, and they didn't match up with what I had applied for, and I called her to find out the difference.

Q What was said to you by her when you calle

A I told her that there was ---

THE COURT: The jury can't hear you.

A I told her that there was a difference in the amount of checks we were expecting and the checks presented to us on these rebate applications.

She explained that if I followed through and read my plan, the plan by Chevrolet for fleet account rebates, you were entitled to the rebate if you titled and registered in your name at least 20 units per calendar year.

They had not done so, so they were not entitled to it.

THE COURT: May I have that answer read, please?

(Record read.)

Q Do you know what the requirements are for a fleet certificate?

A Yes.

THE COURT: I am very sorry, would you read that last answer again?

(Answer read.)

THE COURT: Let me ask you a question. Do I understand that no rebate was received for Nabcor?

THE WITNESS: That's right, your Honor.

THE COURT: And whatever rebates were received were related to other customers?

THE WITNESS: Yes, sir.

THE COURT: Go ahead, Mr. Person.

Q This application is dated November 22, 1967. Was it submitted at or around that date?

A That is the date I mailed it.

Q Do you recall approximately how long after you made this application that you had your telephone conversation with that General Motors employee?

A No, sir.

Q Two or three weeks?

A I couldn't say, honestly.

Q How long does it take --

THE COURT: Speak as loud as you can.

Q How long does it normally take to receive a check from General Motors when your request for the basic purchase allowance is submitted, after it is submitted?

A It never concerned me, because I never got the checks, sir. Our comptroller got the checks and related to me how much he got and checked it with my records. So I really never kept the date when the checks came in.

Q Is it customary for you to review a form with respect to any missing payments within a month after the form had been prepared and mailed by you?

A I would say yes.

Q Are you familiar with fleet certificates?

A Yes, sir.

Q Have you ever assisted anyone in making application for a fleet certificate?

A No, sir.

Q Have you ever communicated with any official of the Chevrolet zone or the regional office of the fleet section concerning a person that wanted a fleet certificate?

A Yes, I believe so.

Q Who did you communicate with, Mr. Di Simone?

A No.

Q Mr. Speece?

A I didn't communicate with any of them. It was Mr. McIntyre who did.

Q You said that 20 vehicles registered in the name of the company were required for the company to be qualified so that Rohrer could receive a fleet rebate; is that correct?

A Rihrer didn't receive the fleet rebate, the customer did.

Q Back in 1967?

A Yes. There is no rebate now, sir.

Q Now there is no rebate?

A No, sir, there is no rebate now.

Q But back in 1967, had Nabcor ever requested a fleet rebate from Rohrer?

A Yes, sir.

Q How did they do that?

A Evidently they were aware somewhere along the line that a fleet rebate was given back to the customer.

Q Who did you know that from?

A From Mr. Snyder.

Q What did he say?

A He said how can we get someone the rebate, get it on the application for the rebate.

I told him he had to have 20 cars licensed and registered in Nabcor, Incorporated, before you could apply for this.

This evidently was the rule long before I became an employee.

THE COURT: Was this before or after you talked to this Irene Hanlon?

THE WITNESS: That was after, sir.

THE COURT: You told him what happened?

THE WITNESS: Right, sir.

Q Are you familiar with requirements for a fleet certificate back in that same period?

A Not really, sir.

Q Had anyone ever told you that it took 20 vehicles registered in the company's name to be eligible for a fleet certificate?

A No. It is in the rebate booklet which I brought with me from Jersey. That gives you the rules for the fleet account in that.

MR. KAPLAN: We are getting into the same mess we got into before. The witness isn't listening to the question and is confusing certificates and rebates and everything else, and if Mr. Person could be a little bit more careful with the question I think it would help and save some time.

THE COURT: You listen very closely.

THE WITNESS: All right.

THE COURT: Next question.

Q Exhibit 498 for identification, I would like to have you look at this copy of a letter dated December 12, 1967.

Do you recall having seen the original of that?

A No, sir.

Q Do you recall any communications with Nabcor on or about December 12, 1967, concerning the fleet rebate?

A Only what I have already testified to.

Q Did Rohrer Chevrolet at any time during 1967 request an account to sign some type of authorization for Rohrer to accept the fleet rebate on behalf of their account?

A Not to my knowledge, sir.

Q Have you ever spoken with Herb Dunham?

A No, sir.

Q Have you spoken with I think Mr. Speece of the Chevrolet zone?

A I met Mr. Speece but I had no conversation with him other than hello.

Q When did you meet him?

A I don't know, sir.

Q Back around December 12, 1967?

A It could have been.

Q Was he at a meeting with Mr. McIntyre?

MR. KAPLAN: I move to strike"it could have been," your Honor.

THE COURT: I will deny the motion.

Q Do you know if Mr. Speece was meeting with Mr. McIntyre?

A No, he wasn't, sir.

Q Who was he meeting with?

A I don't know that he was meeting with anyone.

THE COURT: Where did you say hello to Mr. Speece?

THE WITNESS: In the Rohrer Chevrolet, but he wasn't in anybody's company. He was walking down the hall and introduced himself. He knew I was working for the fleet department.

Q Do you know in what way the orders for Nabcor were transmitted to the Chevrolet zone by Rohrer Chevrolet? Do you know whether they were fleet or sold orders?

A Fleet and sold.

Q You transmitted sold orders as well as fleet?

A Yes, sir.

Q How do you know that?

A Because I ordered them.

Q How do you know whether to submit a fleet order or a sold order?

A It was my own thinking. No one told me.

Q On what basis did you determine it?

A I worked in the fleet office, so I assumed what we ordered were fleet customers and ordered them accordingly.

Q So that for Nabcor you say that you ordered some cars on a fleet basis, is that correct?

MR. KAPLAN: I object to that.

Q Did you order all cars on fleet --

THE COURT: Overruled. I am not clear. I thought you said from Nabcor you ordered some fleet?

THE WITNESS: Yes, sir.

THE COURT: And some which says it was sold?

THE WITNESS: Yes, sir.

THE COURT: What is your best memory, would they be all one or the other? What is your best memory?

THE WITNESS: I ordered them both ways.

THE COURT: Why would you order some one way and some another way?

THE WITNESS: I think on my own initiative, after they were denied the fleet rebate I assumed they were no longer fleet and ordered them sold.

BY MR. PERSON:

Q You can recall that very clearly?

A Yes, I think so.

Q When orders were submitted on a fleet basis, was there anything more that fleet meant other than a fleet rebate?

MR. KAPLAN: I object to the use of the fleet basis. I know Mr. Person wants to ask the question when orders were submitted were the boxes checked fleet, but let's be precise.

Q When orders for Nabcor used to be fleet, are you saying that you checked on the wholesale order form the box marked fleet?

A Yes.

Q Why did you do that?

A Because I worked in the fleet office and I was ordering for them and I would order automatically fleet on it.

Q Where did you work before Rohrer?

A I didn't, not for three years before that.

Q Did you work for any automobile dealership prior to that?

A No, sir.

Q When did you first begin with Rohrer?

A In 1967, sir.

Q In September?

A No, sir.

Q When?

A I believe March.

Q I am sorry. When you used the designation sold on the wholesale order form, I gather you did this after the fleet rebate application was denied, is that correct?

A Yes, sir.

MR. PERSON: I would like to see those orders that were brought here.

THE COURT: Let's take a short break, please.

(Recess.)

left the stand on Monday?

A No, sir.

Q Have you talked with anyone about your testimonyor the subject matter of your testimony with anyone since you left the stand?

A No, sir.

Q Rihrer Chevrolet produced some documents on Monday and one of them I believe was the National Account List, is that correct?

A Yes, sir.

Q Do you recall the date of that list?

A I know it is 1970, but I don't know the month.

Q Exhibit 626 in evidence was issued June, 1970. Do you know whether the one that you are referring to, the one brought was the most recent edition of that National Account List, to your knowledge?

A Yes.

Q That makes it more than six years old now. Do you still have any use for that list?

A No, sir.

Q In other words, you are not currently using that list?

A No, sir.

Q Do you have any reason why you still retain that list?

THE COURT: What is the possible -- I have got to get this trial finished and I have got to keep it on the track. If we could, please, instead of being continually diverted on general practices and discussions of catalogs and so forth, get to the point.

Was there anything that General Motors said to Rohrer to hold them up, to prevent them from selling, and if so, let's find that out. The other stuff will take care of itself.

MR. PERSON: Your Honor, I don't feel that it is possible to go into that unless we understand from her --

THE COURT: We have had continual diversion from the main point on witness after witness, and that has been one of our problems. I think we have to stick to the main point.

BY MR. PERSON:

Q Did the orders for Nabcor placed by Rohrer with General Motors, referred to in this application for basic purchase allowance, which is Exhibit 642 in evidence, produced by Rohrer on Monday, do you know whether those cars were taken from Rohrer's retail allotment?

A They were ordered for Nabcor.

THE COURT: The question is --

A (Continuing) They weren't taken out of stock, they were ordered directly for those people.

Q But a fleet order is also ordered directly, is it not?

A Yes.

Q A fleet order would not be out of stock?

A It could be.

Q If it is ordered from the factory?

A If you are ordering from the factory, you are right.

THE COURT: What is your question?

Q Do you know whether or not the cars ordered for Nabcor, received by Rohrer and referred to in Exhibit 462, the application for the basic purchase allowance, were deducted from Rohrer's retail allotment which is given by Chevrolet?

A I wouldn't know that, sir.

Q Do you know what a retail allotment is?

A Yes.

Q Could you state what it is?

MR. KAPLAN: I object unless there is some foundation laid for the basis of her knowledge.

THE COURT: She said she knows. Objection overruled.

MR. KAPLAN: May I have a few questions on voir dire?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q Miss Madden, what is the source of your information about allotments?

A Just general information; nobody told me.

Q It is an assumption and things that you picked up in the business?

A Yes.

Q Have you ever had a course or manual or any other course of instruction about how General Motors makes up allotments?

A No, sir.

Q Did you ever receive a manual from General Motors describing it?

A No, sir.

MR. KAPLAN: I object, the witness is incompetent to testify.

THE COURT: Overruled.

Q Could you tell me what a retail allotment is?

A In my opinion?

Q Yes.

A It is an allotment that General Motors allows Rohrer Chevrolet for retail sales.

Q Is that according to your own information on a periodic basis?

A No, It is just something you picked up from working around there.

Q Is the allotment a specific number of vehicles which Rohrer can buy during a period?

A That I don't know.

THE COURT: Did you work in the retail area?

THE WITNESS: No, sir.

THE COURT: She really has said nothing more than one might gather from the words, and I think that I will sustain the objection, and you will have to have somebody else testify. It was not her field.

Q When you ordered cars for Nabcor before the communications with General Motors concerning the fleet rebate application, you testified that you ordered them as fleet automobiles, is that correct?

MR. KAPLAN: Object to the form.

Q Did you order these automobiles by checking the fleet box on the order form?

A Those particular automobiles?

Q Yes, the ones referred to in Exhibit 642, basic fleet application.

A Yes.

Q What was your application as to the reason that you were checking that box?

MR. KAPLAN: Objection.

Q Did you have any reason for checking the fleet box?

MR. KAPLAN: Objection as to relevance.

A Only that I worked in the fleet office and we usually order by fleet account. But that could be one automobile or fifteen. The fact that it came through my office, nobody told me to check "fleet" or check "stock."

Q And it is customary in your office to order cars by checking the fleet box?

A Yes, sir.

Q Is it still customary?

A Yes, sir.

Q Subsequent to your discussions with General Motors concerning this application for the rebate you changed the method in ordering cars from Nabcor, is that correct?

A Yes, sir.

Q And you ordered them in what way?

A Sold.

Q And who told you to do this?

A Nobody.

MR. KAPLAN: Objection.

Q Nobody. Why did you do this?

A I figured they turned them down on fleet so I put them in sold.

Q How did they turn them down?

A They only turned them down because they weren't elibible for the rebate.

Q What was turned down?

A The rebate.

Q Was there any question at all about

whether the cars themselves could be received on a fleet basis?

A Oh, no. Nobody told me they could or could not. I know when I ordered them I got them. How we got them, I really wasn't concerned about.

Q What is the average length of time that it takes for Rohrer to obtain an automobile ordered by checking the fleet box?

A Unless it is the new model run time, it's about four to six weeks.

THE COURT: Let me hear the question and answer.

(Record read.)

Q Do you know what the length of time is that it takes Rohrer to obtain cars ordered by checking the sold box?

A Approximately four to six weeks.

Q And is there any exception to that?

A Yes.

Q What is that?

A When the model changes over you cannot promise anybody they'll get a car in four to six weeks because there are so many orders in for the new model that it sometimes takes longer.

THE COURT: That's what you refer to as the new model run time?

THE WITNESS: Yes, your Honor.

Q When does that begin, approximately?

A Approximately. It begins with orders that are turned in in maybe August or September.

Q Are fleet orders received any faster than orders that are checked --

MR. KAPLAN: I object.

Q Are orders marked "fleet" received ever faster than orders marked "sold"?

A I have never noticed it to be so, no.

Q Do you ever receive any sold orders in your department?

A I did when I ordered Nabcor for sold.

Q Do you know how the orders for -- strike that.

Do you know whether any of the orders that were ordered for Nabcor after December, 1967 -- do you know if any of these orders were taken from Rohrer's retail allotment?

A I wouldn't know that, sir.

Q Did you ever have any discussions concerning Rohrer's retail allotment in connection with Nabcor?

A With whom?

Q With anybody.

A Well, it's a thing I might have discussed with my boss. But not with anybody else.

Q And did you have any responsibility at the time of Nabcor's orders to know whether or not the orders were taken from Rohrer's retail allotment?

A Not to my knowledge. I don't remember.

Q Was Mr. McIntyre the person who might have known?

A Yes, sir, he would have known.

Q When you submitted orders on a fleet basis -- by that I'm referring to the method of ordering the car -- when you checked the order form, did you then contact the zone by telephone and advise them that an order marked "fleet" was being submitted to the zone?

A No, sir.

Q Did you ever give any identification by telephone to the zone of a customer that was --

for whom you were submitting an order marked "fleet"?

A No, sir.

Q And no fleet certificate number, I gather?

A No, sir.

THE COURT: Do I understand it that in your orders to General Motors, where they were marked "fleet," Nabcor was not identified?

THE WITNESS: Yes, it was identified.

THE COURT: Was it?

MR. PERSON: I asked by telephone, in addition.

THE WITNESS: He asked me if I called by phone.

THE COURT: But Nabcor was identified?

THE WITNESS: On every order.

THE COURT: Would that for both the fleet order and the sold?

THE WITNESS: Yes, your Honor.

BY MR. PERSON:

Q And is the name of a retail customer also indicated on the form when it is a sold order, a normal retail customer?

A I don't handle retail orders but I would assume so, yes.

Q When orders are submitted by Rohrer to General Motors, does Rohrer pay General Motors the same amount for the same type of car?

A I would have no idea.

Q Who in the Rohrer organization back in 1967 kept track of retail allotments, if you know anyone that did.

A I wouldn't know, sir.

Q Was it Mr. McIntyre who kept track of any fleet allotments?

A If anyone did, I assume it would be Mr. McIntyre, yes.

Q Do you know whether there were any limitations in the fleet department or elsewhere in Rohrer as to the number of cars that Nabcor could order from Rohrer?

A No, sir, I know every order they submitted I did get the cars for.

THE COURT: I want to hear the question and answer. I didn't hear it. You will have to speak up just a little bit.

THE WITNESS: I'm sorry.

THE COURT: You are doing almost well enough, but not quite.

(Record read.)

Q You can recall that very clearly?

A Well, it would be an unusual thing if I ordered a car and didn't get it, it would stick in mind as opposed if I ordered it and I got it, for anybody, not just Nabcor.

Q So it's unusual to have an order returned by the factory?

A Yes, sir.

Q And you would remember that if it occurred?

A I think so.

Q And you don't recall any from Nabcor that were returned by the factory?

A Not to my knowledge, sir.

Q You mentioned that you saw Mr. Speece walking down the hall of Rohrer Chevrolet, and do you know if he spoke with anyone at that time in Rohrer Chevrolet?

A I didn't see him speak to anyone, no.

Q Had you ever seen him before in Rohrer

Chevrolet?

A I couldn't have seen him before the first time I had met him.

Q Had you ever seen him after that time in Rohrer Chevrolet?

A I may have, once or twice.

Q Did you ever speak with him?

A Just hello.

Q Did Mr. McIntyre say to you that he spoke with Mr. Speece about Nabcor?

A No, sir.

Q Did anyone at Rohrer Chevrolet say to you that he or she spoke to Mr. Speece about Nabcor?

A No, sir.

Q Was Rohrer desirous of selling cars to Nabcor at all times according to your own knowledge?

A According to my knowledge, yes, sir.

Q Did Rohrer want to sell to Nabcor as many cars as it could?

A Rohrer would like to sell as many cars as it could to anybody?

Q Right, including Nabcor.

A Yes, sir.

Q Do you recall any change in the activities of General Motors concerning orders submitted by Nabcor subsequent to December, 1967?

A I don't think I understood that question.

THE COURT: Before we get to that, now the jury may remember, but I really don't, what's the December, 1967 date?

MR. PERSON: 11/22/67.

THE COURT: What's that exhibit, 642?

MR. PERSON: Exhibit 642 is dated 11/22/67, and several weeks later, which would put us in December, '67.

THE COURT: The application for rebates was denied?

MR. PERSON: And there were communications concerning Nabcor and General Motors concerning this fleet rebate application.

THE COURT: That was Miss Madden's testimony about the talk with Eileen -- was it Hanlon?

THE WITNESS: Yes, your Honor.

MR. KAPLAN: Yes, your Honor.

THE COURT: Denying the rebate, right?

MR. PERSON: Yes.

THE COURT: And then is it the case that up to that point -- so we are assuming that is December, '67 when that conversation with Eileen occurred. All right.

Q Now, subsequent to your conversation with Miss Hanlon of General Motors did you become aware of any change in business practices of General Motors concerning orders for Nabcor submitted by Rohrer?

A I don't remember any, sir.

Q Do you recall whether it was the practice of Rohrer Chevrolet or you or Mr. McIntyre to delay the placing of Nabcor orders after December, 1967 for any reason at all, that is, placing them with GM?

A No, sir.

Q And do you recall that you promptly placed every order that Nabcor gave to you with General Motors?

A Yes.

Q Shortly after they gave you the order?

THE COURT: Wait, let her finish her answer.

What was the answer?

THE WITNESS: My answer was yes, when we got the orders I placed them.

THE COURT: All right.

Q Do you recall that there was any holding up by any person of any orders that were ordered by Rohrer for Nabcor?

THE COURT: Really, we have been over and over. Let's bring this to a conclusion.

MR. PERSON: I have an Exhibit 502 for identification.

Q I have an Exhibit 502 for identification, it's a letter from Rohrer Chevrolet, dated August 20, 1968, and can you tell me whose signature is at the bottom of that letter?

A Yes, that is Mr. McIntyre's signature, sir.

Q Were you the one who typed that letter?

A Yes, sir.

MR. PERSON: I'd like to offer this letter in evidence.

MR. KAPLAN: Objected to, your Honor,

as hearsay and irrelevant.

THE COURT: Can I see it?

(Handed to court.)

T3

THE COURT: Sustained.

Can both of you keep your voices up?

MR. PERSON: You sustain the objection on this?

THE COURT: I am sustaining the objection.

Q Do you recall discussing with Mr. McIntyre the subject matter of this letter that I just showed you?

MR. KAPLAN: I object to that, your Honor.

THE COURT: I think I will have to talk to the lawyers.

(At the side bar.)

THE COURT: You will just have to articulate your objection.

MR. KAPLAN: My objection to the letter is, of course, that it is hearsay. That is a statement by McIntyre. He is dead and I can't possibly cross-examine him about it.

THE COURT: It is a statement about King of Prussia who are also not in court. That it seems to me is hearsay as far as McIntyre as far as it represents some statement on behalf of King of Prussia Motor Company.

MR. KAPLAN: Chevrolet Motor Company, King of Prussia. It is McIntyre's account of what somebody told him.

THE COURT: The problem I have with the objection to this question is that it has been asked a lot without objection regarding whether she was given any instructions and so forth. Now, to cut it off --

MR. KAPLAN: The reason I do it is because this is nothing but a frolic and detour which will take some time. We served notices to admit. The orders for the cars were filled and all he is going to get is either she did or didn't have a conversation, and the orders were submitted and filled, and then just go on reading requests to admit to the jury.

MR. PERSON: Mr. McIntyre had the authority to send the letter, it was in Nabcor's files and she indicated she knows the letter and it goes to attack her credibility and it shows there was delay.

MR. KAPLAN: How it can possibly attack her credibility?

THE COURT: It doesn't, unless there is a prior inconsistent statement. There are rules of evidence and if it gets in it gets in and you have got to comply with some semblance of the rules.

The only thing that worries me about the objection is that there again, as I say, there has been a lot of testimony admitted so far without objection, which could have been objected as hearsay. I don't know whether there was a waiver or something like that.

What happened here? Where are we going?

MR. KAPLAN: I don't know where Mr. Person is going or what he wants to establish.

THE COURT: What do you want to establish, the orders were not filled?

MR. PERSON: There was an application and there was an interference with the order of Rohrer's desire to sell the automobile.

THE COURT: What is order No. 10758? For what year, a 1969 Chevrolet?

MR. KAPLAN: Yes, your Honor.

THE COURT: A 1969 Chevrolet?

MR. PERSON: Yes, your Honor.

THE COURT: So this was very early in the model year. The 1969 Chevrolets were just coming out, right?

MR. KAPLAN: They hadn't come out until October.

THE COURT: Just in the offing, right?

MR. PERSON: I don't know the exact date.

THE COURT: I remember since childhood, if it is a 1969 car you will start hearing about it and learning about it in the Summer and Fall, is that the way it is?

MR. PERSON: Right.

THE COURT: Now, what is your indication? I just want to know if you have got any sensible contention here.

This is exactly the kind of issue that raises problems about delivery, isn't it?

MR. PERSON: They talk about buying the car, but not with a fleet allotment.

MR. KAPLAN: That is why I make the hearsay objection. Obviously, what was going on McIntyre was asked about Nabcor, could he get some kind of expedited delivery at the beginning of the allotment year. I can't possibly know whether this letter represents his excuse to Nabcor why he wasn't going to do it and it may not even be true. The key fact in this is Nabcor admitted in the requests to admit that the automobile was delivered on November 18, 1968, which is right in the start of the model year. They got it pretty fast. And that is true of both of them. The models only came out in October and they got the car and got it fast.

THE COURT: Considering everything else the indications are very strong that this is another dead end. Nabcor was ordering new model Chevrolets and they got it and I don't know what you are driving at.

Were they thereafter prevented from gettting other Chevrolets?

MR. PERSON: The order, they were not allowed to use the fleet allotment. They were sold at retail.

THE COURT: At the beginning of any model year you might have a lot of problems, so what?

MR. KAPLAN: The simple fact is the witness testified they got every Chevrolet they ordered.

THE COURT: I will sustain the objection. I don't think there is any waiver of hearsay.

(In open court.)

THE COURT: I will sustain the objection to that question, but I will permit you to ask her about her knowledge in the way you have been of any transactions.

I willpermit you to use the letter to try to refresh your recollection on appropriate questions. But I will draw the line at just pure hearsay use.

BY MR. PERSON:

Q Were orders for Chevrolet cars submitted by Rohrer during 1968 to a Chevrolet division at King of Prussia?

THE COURT: A Chevrolet division?

THE WITNESS: Zone office.

Q Located at King of Prussia?

A Yes, sir.

Q Was this the same office for the submission of cars for retail, either fleet orders or sold orders?

A Yes, sir.

Q The same office?

A Yes, sir.

Q Do you recall ever having submitted any orders to the zone office in King of Prussia marked as fleet orders, which orders were returned by the zone office?

A Not that I remember, sir.

Q I would like to have you take a look at this exhibit and see if --

A I read the letter, but I still don't remember.

Q See if it helps. It doesn't help to refresh your recollection?

A No, I am sure it happened, but I don't remember it.

Q Do you recall whether the price that Rohrer was charging Nabcor changed at any time?

A I remember that some time in late 1970 I believe it was Rohrer Chevrolet raised their price for fleet cars, not only to Nabcor but other fleet accounts.

Q What month, approximately?

A I know it was about 1970, but I really don't know the month.

Q Do you recall if Nabcor and Rohrer were doing business at that time, in 1970?

A Yes.

Q Can you approximate the month that this increase in price took place?

A No, I couldn't.

Q What was the price at that time? What was the fleet?

A The fleet price was $50 over invoice and Rohrer Chevrolet raised it to $75 over invoice.

Q Could it have been $70 over invoice?

THE COURT: What, before or after the increase?

Q I am asking about the increase, it brought it up to $70 or $75 over the invoice from factory.

A I thought it was $75. I could be wrong.

Q This was a price that fleet accounts customarily paid?

A Yes.

Q In the log of Nabcor, Exhibit 450 in evidence, at page 30056, line 17, there is a notation that a car was ordered from Rohrer Chevrolet after February 6, broker order No. 62-33, 1968 Chevrolet Chevelle, and indicated in the record that the customer is Edward Paolucci. There is a reference in the log cancelled 2/9/68, and on the following page, the same line, it says cancelled, on 30057.

THE COURT: What is your question?

MR. PERSON: Exhibit 643 and also 644.

MR. KAPLAN: I object to both of them, your Honor.

THE COURT: May I see them. You are offering them.

MR. PERSON: Yes.

THE COURT: Can you come up?

(At the side bar.)

THE COURT: What's the ground, what is the objection?

MR. KAPLAN: Hearsay, these are Nabcor documents. They don't bind this witness. If she testified she saw them or sent them back, that's another matter. But just to offer them blindly like this -- certainly a notation by Nabcor that it was cancelled by Rohrer is not admissible. It's just a self-serving statement.

THE COURT: Okay. In other words, your objection is there is no foundation.

MR. KAPLAN: For the moment.

MR. PERSON: The log shows that the order had been placed and that this is the order form that goes out to the dealer. This is the order form that goes out.

THE COURT: What does the log show?

MR. KAPLAN: Cancelled 3/9/69 -- it says 2/9 -- but it doesn't say who cancelled. It just says cancelled. Maybe the customer cancelled.

THE COURT: I think you can ask -- whose writing is this "Cancellation"?

MR. PERSON: I would suspect that's Bill Nash who wrote this.

THE COURT: Who is he?

MR. PERSON: He wrote in red in the log. He was an official of Nabcor at that time. I believe he was there at that time.

THE COURT: I'm going to let in 643, because it seems to me a business record of Nabcor.

MR. KAPLAN: Certainly no showing that these kinds of notations were made in the ordinary course, your Honor. Furthermore, I would like to add something further on that: There is going to be evidence in this case that as early as March, 1967 Maiorana had told Nash that he should start keeping notes for the lawsuit, and in those circumstances absolutely any piece of paper from Nabcor's files is suspect. There is such deposition testimony.

THE COURT: In other words, you say that there should be a foundation laid for the notations.

MR. KAPLAN: Sure, under Palmer against Hoffman, even if it is a business record, it is a suspect business record.

MR. PERSON: It corresponds to the records that were in the log.

THE COURT: Except that what the defendants are objecting to is the handwritten notation at the top, particularly "Cancellation from Rohrer," and it's funny, you have got two notes, "Cancelled 2/9/68" in red ink, and then you have got "Cancellation from Rohrer" in blue ink, and one wonders why those two inks, what was the motigation for putting the "Cancellation from Rohrer." The log doesn't say "Cancellation from Rohrer," does it?

MR. PERSON: No, but we have --

THE COURT: I will sustain the objection for the present.

(In open court.)

BY MR. PERSON:

Q I'd like to show the witness Exhibit 643 for identification. And is that the type of form on which Rohrer received orders from Nabcor?

A Yes.

Q Do you recall whether that order was received by Rohrer?

A I couldn't begin to guess, to remember if this particular one came to us.

Q Is there any handwriting on this which is yours, in the upper left?

A Definitely not, sir.

Q Did you make any indications on any of these forms when they were received by you to show the receipt of the form?

A No, sir. I just attachedm to the order.

Q Were your records ever produced to any agency of government concerning Nabcor?

MR. KAPLAN: Your Honor, I object.

THE COURT: Sustained.

Q Do you have records concerning Nabcor

Q On February 6, 1968 were Chevelle automobiles in short supply, do you know?

A At one time or another they are all in short supply, but I couldn't pinpoint that particular model.

Q Did there come a time at which Rohrer Chevrolet and Nabcor stopped dealing with others?

A Yes.

Q Do you recall any discussions that you had in connection with that?

A No,sir.

Q Did any event take place?

A No, in the fleet department you may order some for even like police cars for a certain township for so long; then after a while they just don't ask you to bid any more, you just don't ask them why, you assume they found another outlet.

Q According to Defendants' Exhibit D-7 --

MR. PERSON: Which I think I can now offer in evidence --

THE COURT: D-7?

MR. PERSON: D-7, your Honor.

THE COURT: All right, received.

(Defendants' Exhibit D-7 was received

in evidence.)

xx THE COURT: Is this a tabulation of transactions with Rohrer?

MR. KAPLAN: Yes.

MR. PERSON: It is entitled "Record of Cars Purchased" --

THE COURT: All right. Pass copies to the jury.

What's your question?

Q According to the second page of this exhibit, D-7 --

THE COURT: She doesn't have it.

Q At the second page of D-7, 37 lines up from the bottom, under the column which says "Date of Rohrer Invoice to Nabcor," there is a date, January 10, 1968. Following that -- could you tell me -- well, following that there are several entries on the same page. One of them is February 13, 1968. Then February 22, 1968, and on the following page, the first three are February 22, '68, February 26, '68, and February 29, '68.

If you will notice in the third column, "Date of Nabcor Order," the orders that I've just referred to were ordered in December for the first two that I mentioned on page 2, but on page 3, the date of the Nabcor order is November 29, 1967, November 29, 1967, and November 24, '67.

In the case of the top one on page 3, the period of time that has elapsed between Nabcor's order to Rohrer and Rohrer's shipment -- I'm sorry -- Rohrer's invoice to Nabcor --

A But it doesn't tell me when they sent them to Rohrer. It tells me the date of their order.

THE COURT: What do you mean, date of their order?

THE WITNESS: Sent them to Rohrer on the 11th?

MR. PERSON: That's the date, I thought -- Mr. Kaplan?

MR. KAPLAN: I certainly will not concede that. That is a date on the purchase orders of Nabcor. I have no idea of the date.

Q The date on the Nabcor purchase order is Novmeber 29, 1967, and the period of time between that and the date that the car was invoiced to Nabcor by Rohrer was about 86 days, if my calculation is correct, from November 29, 1967 to February

22, 1968.

Is a period of 86 days, plus or minus, say, three or four days, an abnormal length of time that it takes for a car to be delivered, to be ordered by Rohrer and to be delivered to the customer?

MR. KAPLAN: Your Honor, I do object because there is no foundation as to when Rohrer got the order or when Rohrer ordered it from General Motors. The exhibit shows Rohrer gave the car to Nabcor within a week after they got it from General Motors.

I don't see how the witness can possibly say anything.

MR. PERSON: I'm asking merely about the time which is a period of time of 80 days between the date --

THE COURT: But it may not mean anything.

I take it, Mr.Kaplan, you question the time when orders dated a particular date by Nabcor actually got to Rohrer.

MR. KAPLAN: Of course.

THE COURT: All right. I will

sustain the objection.

What's the second, that column "Serial Number Last Six Digits," serial number of what, Mr. Kaplan?

MR. KAPLAN: That's the last six digits of the vehicle serial number?

THE COURT: Okay. Anything else?

MR. PERSON: Yes.

Q Do you recall orders that took as many as 80 days to order from GM and deliver to the customer of Rohrer?

A Offhand, I would say no.

Q Do you know a Mr. Fleagle?

A No, sir.

Q Did you hear of any complaints by a Degnan Chevrolet against Nabcor? Degnan, D-e-g-n-a-n.

MR. KAPLAN: Your Honor, I object. It would be hearsay. It's irrelevant.

THE COURT: Sustained.

Q Did you ever have any discussions with McIntyre or Mr. Lovell or anyone else in Rohrer Chevrolet concerning any complaint by any dealers against Nabcor?

A No, sir.

Q Do you know a Mr. Jack Snyder?

A Yes, sir.

Q Who is he?

A I understood he owned Nabcor because he's the only one I ever spoke to.

Q Do you recall whether you told Jack Snyder that a Mr. Echinrode of the Chevrolet Philadelphia zone had told Rohrer to stop sellint cars to Nabcor?

A No, sir.

Q Were you employed by Rohrer around October, 1970?

A Yes, sir.

Q Do you know a Mr. Echinrode?

A The name is familiar. I can't say I knew the gentleman.

Q Do you know if he was connected with the Chevrolet Philadelphia zone?

A I believe so.

Q As assistant zone manager?

A I wouldn't know his title.

MR. KAPLAN: We will stipulate he was the assistant zone manager..

Q Do you recall whether you told Jack Snyder that you yourself had been instructed by the zone not to sell to Nabcor?

MR. KAPLAN: Your Honor, at this time I object. Can we proceed to the side bar?

THE COURT: All right. Just step up here.

(At the side bar.)

MR. KAPLAN: I don't think this is proper impeachment, your Honor. I think he's just trying to bring out hearsay through questions.

THE COURT: Let me hear the question.

(Question read.)

THE COURT: Well, I think that would be an inconsistent statement, would it not, and have you got Snyder ready to testify that she said all this?

MR. PERSON: Yes.

THE COURT: I will overrule the objection.

(In open court.)

THE COURT: May I hear the question?

(Question read.)

THE COURT: Objection is overruled. Did you tell Snyder that?

THE WITNESS: No, sir.

BY MR. PERSON:

Q Do you recall whether you told Jack Snyder in the presence of Mr. McIntyre that the two of you believed it was GM's Echinrode who directed Rohrer to stop selling to Nabcor?

A It's not true, sir.

Q Your answer is?

A No.

Q Do you recall speaking with Mr. Frank Maiorana concerning Mr. Echinrode on the same subject matter that I asked you about before?

A To the best of my knowledge, I never spoke to the man, period.

THE COURT: You never spoke to Mr. Maiorana?

THE WITNESS: No, sir.

MR. PERSON: Your Honor, a side-bar conference, please.

THE COURT: All right.

(At the side bar.)

MR. PERSON: I want to ask her about the subject matter that is at the bottom of the page which I will identify in a second.

THE COURT: This just isn't comprehensible to me.

MR. PERSON: Miss Madden told Mr. Snyder on about September 30, 1970 that Mr. Lovell, Mr. Collins, who was the sales manager, Mr. McIntyre and Mr. Cook were meeting with GM officials in Rohrer Chevrolet's plant at the time that the FBI came with a search warrant to take records concerning Nabcor.

THE COURT: So?

MR. PERSON: I just want --

THE COURT: It's completely irrelevant.

MR. KAPLAN: I object, of course.

THE COURT: Sustained. There has to be a limit, even on impeachment. It's just not germane.

T5

(In open court.)

MR. PERSON: No further questions.

THE COURT: Cross-examine.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Miss Madden, you testified on Monday about the conversation with Irene Hanlon at General Motors.

Did Irene Hanlon in that conversation say anything to you on the subject of whether you should sell or not sell to Nabcor?

A No, sir.

Q Did she say anything to you other than Nabcor was not eligible for fleet allowances?

A No, sir.

Q Did she ever tell you Nabcor was in the business of reselling automobiles?

A No, sir.

Q Is there anything else she said to you in that telephone conversation that you haven't told us about either today or on Monday?

A No, sir.

Q One of your jobs at Rohrer Chevrolet was to check incoming cars against the orders you had, true?

A Yes, sir.

Q Why did you do that?

A Well, to make sure that the cars came in as they were ordered, one of the options wasn't missing or an option wasn't taken for another option.

Q Did somebody notify the customer when cars came in?

A Yes, sir.

Q Who was that?

A Generally it was me.

Q Was there ever an occasion when automobiles which Nabcor had ordered came in to Rohrer Chevrolet and were not delivered by Rohrer for any reason?

A No, sir.

Q Did General Motors ever tell Rohrer Chevrolet not to deliver cars that arrived?

A Not to my knowledge, sir.

Q By the way, during the period when Mr. McIntyre was alive and Rorher was dealing with Nabcor, where was your office in relation to his?

A Mr. McIntyre's?

Q Yes.

A I was in the same office, sir.

Q Was there any partition between your place of work and his?

A No, sir.

Q Did you share a telephone?

A No, we had two.

Q Two telephones?

A Yes.

Q How large was the office?

A I guess about here to the wall wide and not quite as long (indicating).

Q Perhaps 10 x 10 can we agree?

A I would say so.

Q Could you, Miss Madden,hear anything said in a normal tone of voice in that office?

A Yes, sir.

Q From any point in the office?

A Yes, sir.

Q If somebody was in there conspiring with Mr. McIntyre, you would have heard it, is that right?

A Yes, sir.

Q You didn't hear anything like that happen, did you?

THE COURT: What is the answer?

A No, sir, I am sorry.

Q Defendants' Exhibit B-7 in evidence shows that between August of 1967 and July of 1970, Rohrer Chevrolet delivered 95 new Chevrolets to Nabcor.

Did Rohrer Chevrolet have any difficulty getting automobiles to sell to Nabcor from General Motors?

A No, sir.

Q Did it ever refuse to deliver automobiles that Nabcor ordered?

A No, sir.

Q Did it ever tell Nabcor it was going to cut it off and not provide any more cars?

A No, sir.

Q How is it that Nabcor stopped buying cars in July, 1970?

A I assume they bought them somewhere else. I never asked.

Q You didn't get any more orders, is that right?

A Yes, sir, that's right.

Q Did that happen before or after Rohrer raised its price to all fleet accounts?

A After.

Q Prior to the time Rohrer raised its prices in 1970, was Hertz an account?

A Yes.

Q You sold cars to Hertz?

A Yes.

Q What happened to the Hertz account after you raised the prices in 1970?

A We lost the Hertz Rental Department.

Q About the same time as the Nabcor loss, right?

A Yes, sir.

Q Did you ever return any orders to Nabcor?

A Not as far as I can remember, no.

Q Apart from the conversation with Irene Hanlon that you have told us about, did you ever pass a single word of conversation with anybody at General Motors on the subject of Nabcor before the lawyers came to see you?

A No, sir.

Q As far as you know, did Mr. McIntyre ever have a word of conversation with anybody at General Motors on the subject of Nabcor?

A As far as I know, no, sir.

Q Anyone else as far as you know at Rohrer Chevrolet ever discuss Nabcor with General Motors before the lawsuit got going?

A As far as I know, no, sir.

rp6 Hilda Madden-cross

Q I believe you mentioned the other day that there was an occasion, perhaps more than one, when you saw Mr. Speece on the premises at Rohrer Chevrolet?

A Yes, sir.

Q Can you place the time of any of those occasions?

A No, sir.

Q I think you said on Friday that the first time you met him could have been in 1967?

A Because that is when I started work there.

Q Could it have been in 1968?

A It could have been, yes.

Q Or 1969?

A Yes.

Q Do you know the name Robert Di Simone?

A No, sir.

Q If I suggested to you that he was the rental director of fleet and government sales section at General Motors in Philadelphia, would that still refresh your recollection?

A I still never heard of him, sir.

MR. KAPLAN: I have no further questions.

REDIRECT EXAMINATION

BY MR. PERSON:

Q Who did you deal with at the Chevrolet zone when you mailed orders in marked as a fleet order?

A We don't have anything to do with them, we just mail them. There is no reason to contact anybody unless you want to ask about why an automobile was delayed or whether they notified you that one of the options is not available.

Then the only person I spoke was in distribution, people in distribution.

Q Do you know whether Hertz had any fleet allotment?

A I don't know. I ordered them the same way as Nabcor's.

Q You were unaware whether there was any fleet allotment with respect to any purchases by Hertz?

A I don't know how General Motors handled them.

Q Did you ever communicate with General Motors concerning any fleet allotment for any of the fleet customers of General Motors?

A No, sir.

Q Was your job strictly clerical?

$37:(In open court; jury present.)

MR. PERSON: Your Honor, we'll resume now with the cross of Mr. Maiorana.

FRANK MAIORANA resumed.

CROSS EXAMINATION CONTINUED

BY MR. KLEINBARD:

Q Mr. Maiorana, Nabcor itself, as opposed to its brokers, did not normally engage in the sale of new cars, correct?

A Not normally, no.

Q And Nabcor itself was primarily in the business of selling franchises, correct?

A No, it was in the business of selling automobiles and franchises, automobiles primarily through its brokers.

Q You just answered my question a moment ago. I'm asking you to distinguish between Nabcor itself and its brokers, and a moment ago you told me that Nabcor itself did not normally engage in the sale of cars.

A I believe the word was "primarily," Mr. Kleinbard. I would have to explain to you just exactly how we sold. We sold the cars, we were the dealer --

Q Please, Mr. Maiorana, I just asked you a question, and is it your testimony that Nabcor was not primarily engaged in the business of selling franchises.

A Well, it's all according to what meaning you put to that, Mr. Kleinbard.

THE COURT: Let's not have any fencing along this line. The business of Nabcor -- I take it what you have described earlier is that -- we won't get into primarily for a moment -- you did.

THE WITNESS: That was Mr. Kleinbard's word.

THE COURT: Please. You sold franchises as part of the business, right?

THE WITNESS: As part of it, yes.

THE COURT: And another part of the business, according to your testimony, was the selling of cars to customers through the brokers by a mechanic you have described, right?

THE WITNESS: By selling cars to customers, yes, through our brokers who acted as purchasing agents for the customers.

THE COURT: All right. That is

what his testimony is. You take it from there, Mr. Kleinbard.

MR. KLEINBARD: I will, your Honor.

Q Now, in fact, in 1966 you had between 15 and 25 people engaged in selling franchises, is that correct?

A In 19-what?

Q In 1966 Nabcor had between 15 and 25 people employed in selling franchises, correct?

A I believe that we had about that many, yes.

Q And as a matter of fact, the bulk of Nabcor's gross profit over the years '68 through '71 came from selling franchises and not cars, right?

A Yes, that is true, because of the fact that we weren't getting as many cars as we could --

THE COURT: Okay, Mr. Maiorana, now, look, please listen to Mr. Kleinbard's question, and if your lawyer comes back and interrogates you again listen to his questions, and there is no need to elaborate and make an explanatory statement about your contentions in response to every question.

THE WITNESS: Your Honor, I think we had agreed that if one of his questions was misleading I would have to --

THE COURT: No, there was nothing whatsoever misleading about that question.

Now, is it true or isn't it that in 1968 through 1971 the bulk of Nabcor's profits --

MR. KLEINBARD: Gross profits, your Honor.

THE COURT: -- gross profits related to the selling of franchises?

THE WITNESS: I believe that might be true.

BY MR. KLEINBARD:

Q Might be true, is that your answer?

A I'm not the accountant. I'm not looking at my records. I would have to say that, yes, there was more profits from our franchises than there were from the sale of cars.

Q Indeed, during that period did Nabcor gross more than 12 times as much from selling franchises as from selling cars?

THE COURT: I take it you have got the documents. Why don't you introduce them.

MR. KLEINBARD: All right. I offer, your Honor, an offering circular filed by Nabcor with the Securities and Exchange Commission as a statement made by National Auto Brokers Corporation to the Securities and Exchange Commission. I offer it in evidence for that purpose.

MR. PERSON: I have no objection.

THE COURT: What's the exhibit designation.

MR. KLEINBARD: Defendants' Exhibit F-6.

THE COURT: F-6 is received.

(Defendants' Exhibit F-6 was received in evidence.)

(Mr. Kleinbard read from page 24 of Defendants' Exhibit F-6 in evidence.)

MR. KLEINBARD: Now, I have done the arithmetic, your Honor, and ladies and gentlemen of the jury, and over the four-year period it shows that Nabcor had a total gross profit of $37,943 from selling the cars and a gross profit of $485,538 from selling franchises, or more than 12 times as much from the sale of franchises as from the sale of cars.

BY MR. KLEINBARD:

Q Now, Mr. Maiorana, when Nabcor started in 1966 you sold franhcises to people who became brokers, is that correct?

A Yes.

Q And then in 1967 Nabcor began to sell master broker franchises, correct?

A That is true.

Q And those franchises were sometimes called master distributor franchises?

A That's right.

Q And then in 1968 you began to sell another kind of franchise, and that was called an area broker franchise, correct?

A That became a third franchise in the system, Mr. Kleinbard. It was in addition to --

Q All I'm asking you is whether or not in 1968 you began to sell area broker franchises, yes or no.

A Yes.

T7

Q Now, turning for a moment to the master broker franchise that you were selling since 1967, those were different than the broker franchises you sold in 1966, isn't that correct?

A Yes.

Q One of the respects in which they were different was that the master broker had the right to sell Nabcor franchises to others, to brokers, is that correct?

A That is right.

Q Now, one of the master broker franchises that you sold in 1967 was to a Mr. Bolling and Mr. Strimple, is that correct?

A Yes.

Q. I believe that you testified around October 6, reading from the document, October 6, 1967?

A Approximately that time.

MR. KLEINBARD: I offer Defendants' Exhibit Y, being the agreement between Nabcor, Inc. and Messrs. Bolling and Strimple and also Garry Kuhaneck.

THE COURT: Defendants' Exhibit Y?

MR. KLEINBARD: That is right, the master distributors agreement.

MR. PERSON: I see that this is not a complete reference. There is a reference to Donald Bolling on July 17, 1967, just to make the statement complete. Otherwise I have no objection to the introduction.

THE COURT: I don't understand your objection.

MR. PERSON: There is an incomplete statement about Bolling.

THE COURT: There is an incomplete statement in the document?

MR. PERSON: Yes. The reference to October 6, 1967.

THE COURT: So the document is incomplete?

MR. PERSON: No, I just point that out.

THE COURT: That is a matter of testimony. I will receive the document.

xx (Defendants' Exhibit Y for identification received in evidence.)

MR. KLEINBARD: Your Honor, and ladies and gentlemen of the jury, if you would be good enough to turn to the second page of that master broker distributors' agreement -- that was not distributed, so I will read it to you. It is very short. I will just read two paragraphs of that agreement, your Honor.

"No. 4: Nabcor agrees to allow distributor to establish in its area brokers and associate brokers who will identify themselves as Nabcor brokers and Nabcor associate brokers and distributor will retain all deposits and fees except as outlined in Paragraphs 16 and 17."

Paragraph 16 says:

"Distributor agrees he will pay 25 per cent of the franchise fees and yearly renewal fees to Nabcor for use of its name and system on any broker or associate broker it establishes in its area, plus $500 for national promotion package."

Paragraph 17 speaks of overrides on cars and sales and has nothing to do with the franchise fees, so I am not reading it at this time.

Q Mr. Maiorana, during 1967 to 1969 you charged, Nabcor charged the master brokers anywhere from $25,000 to $50,000 for the master broker franchise, correct?

A That is right.

Q And if one of the master brokers then sold a Nabcor broker franchise to someone else, he charged them a fee, correct?

A Yes.

Q And during the period 1966 to 1968, the fee was generally $5000?

A Will you read that back, please?

(Question read.)

THE COURT: That fee being the franchise fee to the broker?

MR. KLEINBARD: To the broker, your Honor, charged by the master broker.

A No, I don't believe that is correct. I believe that it is higher.

Q What?

A I think it was 6250.

THE COURT: The fee paid to the master broker, is that right?

THE WITNESS: Your Honor --

THE COURT: Just a minute. I just want to find out what you are talking about.

Is that what you answered about the 6250 and is that what it refers to?

THE WITNESS: When he speaks of the broker, we went into a second type of broker, your Honor. The master broker was for one hundred brokers and an earlier broker, and the 6350 I am speaking of was for an area broker who took care of ten brokers, and then his fee became $1500.

We lowered it from the original $5000 and we worked the set-up so these people were in effect management types over the original broker. We started at a $5000 fee and when we had officers of our own doing the training and everything else, the system evolved.

THE COURT: This is way off --

MR. KLEINBARD: It was a very simple question.

THE COURT: I don't understand what you asked him, so I don't understand what the figure he gave really relates to. Would you go into that?

MR,KLEINBARD: Yes, I will, your Honor.

BY MR. KLEINBARD:

Q If during the period 1966 to 1968 Nabcor was operating under its original system of franchising, when a master broker sold a Nabcor broker a franchise, was the price generally $5000?

A No. There were changes in that period, Mr. Kleinbard.

Q Just give the price,if I have given what you consider an incorrect price, you give me the price that you say is the correct price.

A It went into, as far as the broker was concerned --

Q Excuse me, could I have the dollars, Mr. Maiorana? Just the price. All I asked you for was the price that the master broker charged the broker during the period 1966 to 1968. It is a very simple question.

A It started at $5000, and then we went down to what I believe was $500 for the broker itself plus cost of materials, which is what the master broker charged for a broker, not an area broker.

Q Mr. Maiorana, those brokers that paid $5000 to the master broker, the master broker got 75 per cent of that fee and Nabcor got 25 per cent, correct?

A Yes.

Q For every franchise a master broker sold to a broker for $5000 he got $3750, correct?

A Yes.

Q And each automobile that the master broker sold, the master broker would receive $25, correct?

A That is right.

Q And one of the things the master broker did for his $25 was to procure cars for his brokers, correct?

A Yes.

Q As I believe --

A Not entirely. We would assist him in this.

Q When he needed it he would call upon you for assistance, but if he didn't, he got $25 and the reason he got the $25 was because he was helping get cars for the brokers, correct?

A We were selling the cars to his brokers and it all went through the system. We were the licensed dealer and he was a master broker.

They were procuring customers, providing a service to the consumer whereby the consumer saves several hundred dollars on his purchase and we sold --

THE COURT: Mr. Maiorana, please, we don't have to summarize the case in response to every question.

THE WITNESS: Well, what he was saying not so.

THE COURT: Let's get it back on the track.

Q I direct your attention to paragraph 25 of Defendants' Exhibit Y, where it says:

"Distributor (meaning the master broker here, Strimple and Turco) agrees and understands that he will arrange for and provide new cars at established fleet prices, plus transportation, plus the Nabcor distributor fee of $50. This fee is subject to increase if justified by increased costs."

I believe you also testified in this case at an examination before trial, at page 1156:

"Q Well, I am not asking you how many you sold, I am asking you whether when you prepared a particular exhibit, Exhibit 43, you knew or could determine how many cars Strimple and Turco had each sold.

"A No. I wouldn't have that information because they were getting cars on their own.

In any event, in 1968 you started selling area broker franchises, correct?

THE COURT: He's already testified to that.

Q All right. And I believe you started

to say earlier, in response to another question of mine, that these area broker franchises sold for $6250, correct?

A Yes.

Q And the area brokers also had the right to sell Nabcor franchises to other people?

A Yes. They would appoint ten brokers in their area and we would --

Q The answer is yes.

A Yes.

Q Now, when the area broker sold the broker franchises, how was the money divided between Nabcor and the area broker?

A At that time it went to the master distributor, if I recall correctly, and we provided packages of materials, signs, training materials and things of that nature. I think --

THE COURT: Don't we need to get a price?

If an area broker sold a franchise to a regular broker, how much would that, the payment, be for that franchise?

MR. KLEINBARD: I think he testified, your Honor, $6250.

THE COURT: I thought that was what the area broker made.

MR. KLEINBARD: All right, your Honor. Sorry.

THE COURT: Okay.

BY MR. KLEINBARD:

Q Now, when the area broker sold the broker franchise, was the price fixed or was the price -- did it range from a low to a high?

A When the area broker sold the franchise --

Q To the broker.

A To the Broker?

Q Right.

A It was fixed.

Q What was it fixed at?

A I believe at that time it was -- I believe it was $625.

Q Six hundred -- by "at that time" you mean what?

A In the first stage of the area distributorship program, the area broker program.

Q Mr. Maiorana, Nabcor charged the broker for certain materials which they furnished to the broker, correct?

A Yes.

Q Training materials and otherwise?

A Yes.

Q And isn't it that material that you are referring to when you say the broker paid something in the neighborhood of $625?

A No, he paid for it, if I recall, that is what he paid for the franchise and then he got these materials, solicitation materials, training materials, bookkeeping materials, he got an identification sign, which was a lighted electric sign that he could put, you know -- all of these things were supplied by us.

Q By Nabcor?

A By Nabcor, yes.

Q And all that material from you, Nabcor, and he paid $625 for that material, roughly?

A The area broker paid $6250 for his franchise.

Q Right.

A For that he got ten kits for ten brokers.

Q Right.

A When he appointed a broker he had already,